

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

EAST BROADWAY MALL, INC.,	Main Case No.
Debtor.	19-12280-dsj

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AMENDED

United States Bankruptcy Court  
One Bowling Green  
New York, New York

September 12, 2023

B E F O R E:

HON. DAVID S. JONES

U.S. BANKRUPTCY JUDGE

ECRO: ELECTRONIC RECORDING

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- 1) Confirmation Hearing
- 2) Motion Filed by the Debtor for Reconsideration

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A P P E A R A N C E S (All present by video or telephone):

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7 BY: JAMES M. SULLIVAN, ESQ.

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Also Present:

MATTHEW B. BERK, NYC DCAS

KELLY CHO, Bank of Hope

STEPHAN LEE, Bank of Hope

ANDREW PARK, Bank of Hope

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1 P R O C E E D I N G S

2 THE COURT: Good day, everyone. It's Judge Jones.  
3 Thanks for your patience and needed a minute to pull some  
4 papers together. We're here on the East Broadway Mall case,  
5 number 19-12280, with two matters on the calendar. One is a  
6 motion for reconsideration filed by the debtor, and the other  
7 is request for confirmation of a plan as proposed by the plan  
8 proponent Bank of Hope.

9 So nice to see everyone. We've had a lot of  
10 proceedings in the case and I know everyone and we already have  
11 captured your appearances through the sign-in process. So I  
12 think what we can do is just skip appearances and get right  
13 down to the agenda.

14 Further, what I was thinking is it makes sense to deal  
15 with the reconsideration motion first because the status of  
16 that could impact confirmation. Certainly, if granted, it  
17 would impact confirmation, possibly.

18 But let me hear from counsel for Bank of Hope, if that  
19 makes sense to you. Also, are there any further updates with  
20 respect to confirmation you want to get on the record up front,  
21 or anything else that you want to raise, just by way of  
22 organizing today's proceeding?

23 MR. SULLIVAN: Thank you, Your Honor. Yeah, I think  
24 it makes sense to address the reconsideration motion first --

25 THE COURT: Oh, sorry. Remember to say your name for

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1 our poor absent reporter who's piecing this together.

2 MR. SULLIVAN: Oh, apologize, Your Honor. James  
3 Sullivan, Windels Marx Lane & Mittendorf, counsel for Bank of  
4 Hope.

5 So I agree with Your Honor. I think it makes sense to  
6 address the reconsideration motion first and then move on to  
7 the hearing on confirmation of Bank of Hope's fourth amended  
8 plan and disclosure statement.

9 We've tried to resolve as many of the issues as we  
10 can. I think we have resolved all but one very minor issue  
11 with the U.S. Trustee's office. We resolved all the issues  
12 related to the exculpation provision in the plan. We filed a  
13 proffer, which includes the revised language. And we also  
14 submitted a proposed form of order to chambers, and we  
15 circulated that amongst the parties. Hopefully everyone has  
16 received and had a chance to look at that.

17 We have one minor issue with the U.S. Trustee's office  
18 just related as -- as it relates to whether or not any type of  
19 court review of my firm's attorney's fees is going to be  
20 required. And we still have the debtor's objection to address,  
21 as well.

22 THE COURT: Okay. So --

23 MR. SULLIVAN: I think that's pretty much for status.

24 THE COURT: Okay. Thank you for that. Let's, then,  
25 turn to the -- I'll ask everyone else to hold their piece for

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1 the moment. But let's turn to Ms. Keenan and the  
2 reconsideration motion first, and then we'll see where that  
3 leaves us. Okay.

4 So nice to see you, Ms. Keenan. And it sounds like  
5 you've had a busy day. And you can present your  
6 reconsideration motion as you wish.

7 I will say, I'm not -- well, I don't have any very  
8 specific things for you to address. I think the opposition  
9 makes a pretty strong showing, though, but I'll let you present  
10 it however you want.

11 MS. KEENAN: Okay. Thank you. Good morning, Your  
12 Honor.

13 We made the motion because the principals of the  
14 debtor were very upset about the releases that they would have  
15 to give the City.

16 THE COURT: I'm sorry. Ms. Keenan, your audio.

17 MS. KEENAN: But I --

18 THE COURT: Hey, Ms. Keenan, hang on. Your audio  
19 feed's kind of a little iffy.

20 MS. KEENAN: Okay. This is --

21 THE COURT: I don't know if there's --

22 MS. KEENAN: -- a new microphone.

23 THE COURT: So start over, and if keeps breaking up,  
24 we may have you drop your video and see if that just --

25 MS. KEENAN: All right. Is that --



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1 THE COURT: That's better.

2 MS. KEENAN: -- any better?

3 THE COURT: Yeah.

4 MS. KEENAN: Okay. This is new for me, this  
5 microphone.

6 My clients, the principals of the debtor, were upset  
7 about the release language in that stipulation. They have felt  
8 that they were really put out of business by the City and that  
9 is why we are where we are today. I explained to my client  
10 that -- and I read this -- really, it came out in Mr. Kass'  
11 response, that basically the City is releasing the debtor, and  
12 the debtor won't be able to show any damages because they're  
13 basically settling their claims for less than two million  
14 dollars.

15 So as far as the debtor goes, I don't think that we  
16 have a motion to pursue now on that, and I'm not sure -- I  
17 mean, looking at it, at that in that way, I can't show damages,  
18 and so what would they pursue. And so as a result, that is not  
19 a motion that I think can be won at this juncture. I know Your  
20 Honor said that you had some feelings about it.

21 But I don't want to prolong this. They're very,  
22 obviously, devastated by this. They would never have signed  
23 off on the stipulation.

24 I stand by what I've said all along that this was a  
25 nonnegotiable provision mandated by the City, not bank of Hope.

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1 I never complained about Bank of Hope on this. It was always  
2 against the City. They would not give us the thirty days which  
3 they would need in order to put together or get an appraisal  
4 for the funder.

5 And so they put in everything. And for those thirty  
6 days, they were insisted on it. And I had no choice, and I  
7 really feel like I did have a gun to my head. But it is what  
8 it is, and they are getting their release and --

9 THE COURT: They, the debtor, are?

10 MS. KEENAN: That's for the debtor.

11 THE COURT: The debtor is getting a release? Yeah.  
12 Okay. Okay. So does that translate to debtor withdrawing the  
13 motion for reconsideration?

14 MS. KEENAN: Based upon the release language, it does  
15 because I do not believe I can be meritorious on it otherwise.

16 THE COURT: Okay. So I'm hearing that this is --

17 MS. KEENAN: I mean, obviously, I have clients who are  
18 very adamant about the fact that they would never have given up  
19 their rights. But even if that language wasn't there, they're  
20 getting the release anyway. And at the end of the day, they've  
21 lost. And it's sad.

22 THE COURT: Right. Okay. So look, Ms. Keenan, I  
23 understand, and we've had a -- we've gone a long road in this  
24 case together and with the prior judge as well, of course. And  
25 so you've made clear your client's concerns and disappointment

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1 at how the case has shaped up and the seeming outcome. So I  
2 fully understand that.

3 I just want to make sure I'm administering the case  
4 correctly. And so what I am hearing is that you said, yes,  
5 based on the current circumstances and the procedural  
6 developments, debtor's withdrawing the motion for  
7 reconsideration; is that right?

8 MS. KEENAN: I think, actually, based upon what you  
9 said when you sat on the bench, based upon the papers that have  
10 been filed and the opposition that was filed, that if we could  
11 have a decision on it. It could be a short-order decision, but  
12 I think that would be better.

13 THE COURT: Okay. That's fine. Is there anything you  
14 want to add with respect to the contentions that you haven't  
15 covered already on the reconsideration motion?

16 MS. KEENAN: No, I think I've put it all in the  
17 papers. I've been --

18 THE COURT: Okay. Yeah, and I'm sure --

19 MS. KEENAN: I've said it a hundred -- every which way  
20 but loose, I've said it.

21 THE COURT: Right. Okay. I've reviewed the papers of  
22 all parties on the motion, of course. So thank you. That's  
23 fine.

24 Does any other party want to be heard with respect to  
25 the reconsideration motion?

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1 Okay. I paused and heard silence. I'm going to take  
2 that that everyone is content to rest on their papers, which I  
3 likewise have reviewed. And I'm prepared to rule on the  
4 motion. So the following constitutes the oral ruling of the  
5 Court, and I will ask the parties to make sure they order the  
6 transcript so that the record captures the Court's oral ruling.

7 Debtor moves pursuant to Federal Rule of Civil  
8 Procedure 60(b)(3) and potentially 60(b)(6), seeking to vacate  
9 a stipulation and order establishing deadline for certain  
10 actions by debtor, City of New York, and Bank of Hope  
11 pertaining to debtor's interest in lease for 88 Broadway, which  
12 should be 88 East Broadway, New York, New York, so ordered by  
13 the Court and entered on June 22 of the year 2022. I'll refer  
14 to that document as the stipulation, or stipulation and order.  
15 It's docketed at ECF number 110.

16 In support, debtor supports the declaration of Grace  
17 Chan, which appears at ECF number 183, and an affirmation of  
18 debtor's attorney Sarah Keenan, which appears at ECF number  
19 183-1. As Ms. Keenan highlighted in her remarks just now,  
20 debtor takes the strong view that the City treated  
21 debtor unfairly consistently throughout the case. Essentially  
22 made a predetermination that it was not going to continue doing  
23 business with the debtor.

24 The debtor, by way of background, leases the premises  
25 of a mall in Chinatown called the East Broadway Mall from the

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1 City, which is the landlord as well as a governing or  
2 regulating body of the debtor. And the stipulation in question  
3 from which debtor seeks relief was dated, as I said, June 22nd  
4 of 2022 and had quite a number of salient provisions from which  
5 the debtor seeks relief.

6 Particularly troubling to the debtor is a requirement  
7 that as a condition of the parties' agreement that the debtor  
8 shall have further -- would have further time to try to develop  
9 a confirmable plan and business partner and proceed seeking to  
10 continue operating the premises in question. The parties  
11 required the debtor, as a condition of that stipulated  
12 extension of time, to, among other things, agree to drop a pre-  
13 bankruptcy litigation that the debtor had pending against the  
14 City and as well as -- as well as affording other relief.

15 The debtor complains that the stipulation's terms  
16 were, as a practical matter, coercively imposed on the debtor  
17 because the negotiating other parties, the Bank of Hope, which  
18 is the secured lender of the debtor, and the City, in its  
19 capacity as landlord, insisted on that term at a time when the  
20 debtor was going to have its rights expire unless it negotiated  
21 and secured an extension of time. The stipulation, which is  
22 docketed in the case bearing signatures, including of debtor's  
23 attorney Ms. Keenan, as well as counsel for Bank of Hope and  
24 for the City, and it, again, was so ordered by the Court.

25 The Court is going to deny the motion because it

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1 simply fails to meet the standards required for obtaining  
2 relief under Rule 60(b). I largely agree with the legal  
3 analysis set forth in the Bank of Hope's opposition. But in  
4 brief, I will just observe that the debtor's motion, while it  
5 emphasizes facts that understandably are distressing to the  
6 debtor, does not identify any basis for relief, specifically  
7 under Rule 60(b)(3).

8 By way of background, the stipulation was entered,  
9 again, in June of 2022. There's been no showing of any fact  
10 from which any even plausible inference, much less  
11 preponderance-backed conclusion, could be made that any party  
12 to the stipulation, whether Bank of Hope or the City, engaged  
13 in any form of fraud, misrepresentation, or misconduct in the  
14 inducement of the stipulation. It simply was a negotiated  
15 stipulation, providing valuable and meaningful considerations  
16 or concessions to debtor in exchange for securing certain  
17 considerations or concessions from the debtor for the benefit  
18 of other parties.

19 The agreement arises against a long procedural  
20 backdrop in this case, which was filed in July of 2019, way  
21 back before anyone had heard of COVID. The debtor had a very  
22 substantial amount of time to pursue relief under the Code and  
23 develop a confirmable plan, but it failed to do so, really, at  
24 any time. It's understandable that COVID severely impacted the  
25 debtor, which was a retail operation located in a dense

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1 community that was severely impacted by COVID. And it's a  
2 tightly-spaced indoor facility, which is just sort of tailor-  
3 made for struggling with COVID. And the Court appreciates and  
4 understands that.

5           Nevertheless, the case has seen a series of conceptual  
6 extensions of time, including on consent of the City to permit  
7 debtor to attempt to develop viable financing options and a  
8 workable plan that was acceptable to the City. The docket  
9 sheet is peppered throughout the years 2020 and 2021 with  
10 extensions and memorialization of further forbearances and  
11 further agreements of time.

12           Further, well, just by way of example, there were  
13 statements by the City, which are docketed on January 27th of  
14 2021, again, a further extension of this on consent of the City  
15 on March 15th of 2021, and a further extension May 17th of  
16 2021, in all of which the City stated that it was allowing time  
17 to let the debtor try to develop a workable approach by which  
18 it could maintain control of the property and emerge as a  
19 successfully reorganized debtor.

20           Finally, in September of 2021, the City informed the  
21 Court that it wouldn't consent to more formal extensions along  
22 these lines. And yet, even so, on through December of 2021,  
23 negotiations continued on an informal basis, and the Court  
24 entered a scheduling order in December 2021, allowing those  
25 settlement discussions to continue informally with a briefing

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1 schedule imposed if lease issues could be resolved consensually  
2 by February of 2022. That did not occur.

3 So I paused to give that recitation, just to make  
4 clear that although I understand debtor's distress, the  
5 requirements of the stipulation from which relief is now sought  
6 did not come out of thin air, but rather were the culmination  
7 of a lengthy and unsuccessful series of discussions. And the  
8 reason for the stipulation was to give the debtor one last  
9 chance to try to pull together a viable pathway. And at the  
10 advanced stage of this case at which the parties reached that  
11 agreement, they want to ensure that in the event debtor did not  
12 succeed, various disputes would be eliminated and taken off the  
13 table so that the case could finally proceed in an orderly  
14 fashion and the facility could hopefully be put to productive  
15 use.

16 So in preparing for the hearing, I considered a  
17 Eastern District of New York decision by Judge Scarcella in In  
18 re: Koper, 552 B.R. 208, 215 (Bankr. E.D.N.Y. 2016). And I  
19 view the analysis in that case as exactly on point where a  
20 party is seeking relief from a stipulation under Rule 60(b)(3).  
21 In that case, again, In re: Koper, after the parties agreed to  
22 settle a dispute, the debtor filed a motion to vacate the order  
23 approving the stipulation, again, as here, pursuant to Rules  
24 60(b)(3) and (6), arguing that the debtor was induced to enter  
25 the stipulation by misrepresentations and misconduct of the



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1 plaintiff.

2 That contention was rejected, noting that relief from  
3 judgment is generally not favored and properly granted only  
4 upon a showing of exceptional circumstances. See *United States*  
5 *v. International Brotherhood of Teamsters*, 247 F.3d 370, 391  
6 (2d Cir. 2001). See also *Nemaizer*, that's N-E-M-A-I-Z-E-R, *v.*  
7 *Baker*, 793 F.2d 58, 61 (2d Cir. 1986).

8 Further, whether a motion for relief under Rule 60(b)  
9 should be granted as subject to the sound discretion of the  
10 Court, see e.g. *In re: Taub*, 421 B.R. 37, 42 (Bankr. E.D.N.Y.  
11 2009).

12 Drawing from the *Nemaizer* decision I already cited,  
13 the Second Circuit has observed that, "When the parties submit  
14 to an agreed-upon disposition instead of seeking resolution on  
15 the merits ... the burden to obtain Rule 60(b) relief is  
16 heavier than if one party proceeded to trial, lost, and failed  
17 to appeal." *Nemaizer*, 793 F.2d, 63.

18 That is to say, when a party makes a deliberate,  
19 strategic choice to settle, she cannot be relieved of such a  
20 choice merely because her assessment of the consequences was  
21 incorrect. *United States v. Bank of New York*, 14 F.3d 756, 759  
22 (2d Cir. 1994).

23 There is abundant law to the same -- holding the same  
24 thing. I'm not going to elaborate on it here. I don't think  
25 that's meaningfully disputed in the briefing.

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1 To prevail under Rule 60(b)(3), then, the movant must  
2 demonstrate by clear and convincing evidence that the order or  
3 judgment from which relief is sought was procured by fraud,  
4 misrepresentation, or other misconduct. See Fleming v. New  
5 York University, 865 F.2d 478, 484 (2d Cir. 1989). See also In  
6 re: Waugh, 367 B.R. 361, 367 (Bankr. E.D.N.Y. 2007), quoting  
7 other cases.

8 Here, debtor simply identifies no fact and nothing  
9 more than a conclusory allegation of fraud, if that, that was  
10 material to the outcome or the Court's entry as an order of the  
11 parties' stipulated agreement. I don't think I need to  
12 elaborate on that conclusion. That is the fundamental reason  
13 for the Court's ruling, and no fact has been identified, again,  
14 to support the required conclusion that's needed to grant  
15 relief under Rule 60(b)(3).

16 I will say that debtor points to some later  
17 developments, including a potential stay violation by the City  
18 in the form of what appears to be an automatically generated  
19 collection notice or payment-due notice that was generated, but  
20 none of that is material to the question of whether the  
21 stipulation was fraudulently induced in the first place.

22 Debtor also is not entitled to relief under Rule  
23 60(b)(6), which is effectively a catch-all provision that  
24 allows a court to set aside a final order or judgment for any  
25 other reason that justifies relief. Plaintiff hasn't developed

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1 any contentions under Rule 60(b)(6) and has, in fact, framed  
2 its request for relief in terms expressly covered by Rule  
3 60(b)(3). Where a more specific provision such as 60(b)(3)  
4 applies and is not satisfied, relief under Rule 60(b)(6) is  
5 unavailable.

6 So for these reasons, the Court denies the motion for  
7 reconsideration of debtor. I will ask the Bank of Hope as the  
8 opponent to the motion to submit a proposed order memorializing  
9 that denial of the motion and referencing and incorporating the  
10 Court's oral ruling as the basis for that denial. Okay.

11 All right. So thanks --

12 MR. SULLIVAN: Yes, Your Honor.

13 THE COURT: -- everybody. And let's turn to the  
14 confirmation hearing portion of the agenda.

15 So I'll turn it over to Mr. Sullivan for that.

16 MR. SULLIVAN: Thank you, Your Honor. As I mentioned  
17 a few moments ago, we did file a -- on the docket a proffer of  
18 what we hope to elicit during the confirmation hearing today.  
19 I'm happy to read the proffer on the record if Your Honor  
20 wants. I don't know how much time we have, so I don't want to  
21 belabor the point if --

22 THE COURT: Yeah. Yeah, I'll tell you, I have a hard  
23 stop at 1:30. I'd love to finish by 1, and if necessary, I  
24 could resume later in the afternoon. But I do have another  
25 thing. How long is your proffer?

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1 MR. SULLIVAN: It's about ten pages, Your Honor. So I  
2 could try to either goes to the heart of the matter, and at  
3 least what I view as the heart of the matter. Or if Your Honor  
4 wants to just take notice of the fact that it's on the docket  
5 and then we could subject -- if Ms. Keenan or any other party  
6 wants to engage in cross-examination, we could deal with it  
7 that way. I don't want to suggest to Your Honor what you  
8 would -- how you would like the presentation to be made.

9 THE COURT: Oh, I, in turn, don't want to short-  
10 circuit the process. I want you to make the record you want  
11 and develop the evidentiary basis you want and need. And so  
12 whatever you think is going to work is fine. And I don't know  
13 if -- have you discussed this with Ms. Keenan before now?

14 MR. SULLIVAN: I haven't. No, Your Honor.

15 THE COURT: Okay. So let me just -- I think that what  
16 I should do is not dictate how you make your record. So I'm  
17 going to let you present how you want. If you want to -- I  
18 guess your idea of the proffer is to provide information, and  
19 you have a competent witness available to testify to the  
20 event -- to the matters presented if necessary?

21 MR. SULLIVAN: I do, Your Honor. I have Mr. Andrew  
22 Park, who is with Bank of Hope. He's on the Zoom line today.  
23 Two of his colleagues are also on, just in case. But he would  
24 be the primary witness that I would use if I needed to put him  
25 on the stand, Your Honor.

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1 THE COURT: Okay. So I think I'm just going to do  
2 what I said, which is give you free rein. If I run out of time  
3 and need to stick you with a break, I'll just have to do that,  
4 which would be unfortunate, but sometimes necessary. So we'll  
5 see.

6 MR. SULLIVAN: Okay, Your Honor. I'll try to -- I'll  
7 try to speak relatively quickly, but I think it would be  
8 helpful to just kind of go through the various items in the  
9 proffer, and this way, it kind of, like, creates the record, in  
10 case we need to have any kind of further discussion about it.

11 THE COURT: Okay.

12 MR. SULLIVAN: Your Honor, so the offer of proof is  
13 made to demonstrate compliance with Bankruptcy Code Section  
14 1129 in support of confirmation of Bank of Hope's fourth  
15 amended Chapter 11 plan for liquidation, which was filed on  
16 July 5, 2023, and Bank of Hope's fourth amended disclosure  
17 statement on a final basis. Your Honor may recall that you  
18 approved that on a -- you allowed a couple of objections to the  
19 disclosure statement to be carried until today, but I believe  
20 we've pretty much resolved those. I guess we can check with  
21 Mr. Bruh on that, but I'm not sure of --

22 THE COURT: Those were the U.S. --

23 MR. SULLIVAN: -- any that remain.

24 THE COURT: Yeah. You're referring to the U.S.  
25 Trustee objections to the disclosure statement, right, which

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1 were --

2 MR. SULLIVAN: Yes, Your Honor. Yes, Your Honor.

3 THE COURT: Okay.

4 MR. SULLIVAN: So the plan and disclosure statement  
5 were filed ECF docket number 186 and were also attached to a  
6 copy of Your Honor's form of order approving the disclosure  
7 statement, which was docket number 188.

8 Your Honor, we would ask that you take judicial notice  
9 of all documents filed in the debtor's bankruptcy case,  
10 including Bank of Hope's proof of claim.

11 As I mentioned a few moments ago, Mr. Andrew Park is  
12 in attendance today. If called to testify, Mr. Park would  
13 testify under oath as set forth below from his own personal  
14 knowledge and information provided to him by certain of Bank of  
15 Hope's employees and professionals, from his review of business  
16 records maintained by Bank of Hope and relating to the debtor  
17 in the ordinary course of its regularly conducted business  
18 activities, from his knowledge concerning the relationship  
19 between the Bank of Hope and the debtor, as well as with the  
20 City, and certain relevant operations and financial affairs of  
21 the debtor.

22 Mr. Park would testify to the salient elements of the  
23 disclosure statement and plan. Mr. Park is a senior vice  
24 president and manager special assets department for Bank of  
25 Hope. He is familiar with Bank of Hope's financial dealings

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1 with the debtor. And Mr. Park is the person designated to be  
2 responsible in consultation with legal counsel and other court-  
3 approved professionals for Bank of Hope's involvement in the  
4 debtor's Chapter 11 case, including with respect to development  
5 of the plan and disclosure statement, the extensive work of  
6 Bank of Hope with the City toward implementation of the new  
7 lease that is the basis for the plan. Mr. Park has reviewed  
8 and is familiar with the terms and provisions of the plan and  
9 disclosure statement.

10 Based on his involvement in debtor's Chapter 11 case,  
11 his knowledge of relevant information, and his review of  
12 matters with Bank of Hope's outside professionals, Mr. Park is  
13 familiar with matters relating to confirmation of the plan. He  
14 would testify -- with respect to Bank of Hope's history of  
15 financial dealings of the debtor, both pre-petition and since  
16 the debtor initiated this Chapter 11 case, he would testify to  
17 Bank of Hope having given the debtor every opportunity to come  
18 up with a viable plan, which it never did.

19 Mr. Park would also testify to the process obtaining a  
20 best and final bid from all interested parties, including the  
21 debtor, and address the selection process for the approved new  
22 tenant. He'd also testify regarding Bank of Hope's concerns  
23 regarding the debtor's proposal, including the lack of  
24 committed funding to support the debtor's proposal and the  
25 teleconference between representatives of the debtor and the

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1 Bank of Hope and their counsel to address these funding  
2 concerns, debtor's acknowledgment during the teleconference of  
3 these deficiencies in its proposal, and debtors failure to  
4 address these deficiencies. Mr. Park would also testify that  
5 Bank of Hope worked with the City in good faith to find the  
6 best path forward for the debtor's case.

7 And regarding the determination that Broadway Group  
8 LLC made a viable offer, which was determined to be the best  
9 and highest offer among the four total bids received and was  
10 the most likely to be consummated in a timely manner, its  
11 election as the approved new tenant under the new lease, its  
12 posting of a one-million-dollar deposit at Bank of Hope's  
13 request, which is now being held in escrow and will be  
14 available to fund the approved new tenant's obligations under  
15 the plan, and Bank of Hope's work with the City and the  
16 approved new tenant to negotiate the terms of the new lease.

17 Mr. Park would also testify that debtor never offered  
18 with any of its proposals to post a deposit, and upon  
19 information and belief, debtor remains incapable of doing so to  
20 date.

21 Mr. Park would also testify to development of the  
22 disclosure statement and plan. He would speak to  
23 implementation of the plan, including that upon his knowledge,  
24 information, and belief and conversations with outside  
25 professionals and the representatives of the City and Broadway



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1 East Group, LLC that each of Bank of Hope, the City, and  
2 Broadway East Group, LLC will have the ability to satisfy their  
3 obligations under the plan.

4 Mr. Park would further testify that given these  
5 circumstances, there will be sufficient funding for  
6 distributions and allowed administrative expenses under the  
7 plan.

8 Mr. Park would also testify that upon his knowledge,  
9 information, and belief, and conversations with outside  
10 professionals and the representatives of the City and Broadway  
11 East Group, LLC that the lease with the new approved tenant has  
12 been approved by unanimous votes after meetings of the  
13 Community Board Committee and the full community board, and  
14 that a borough board hearing is currently scheduled for  
15 September 21, 2023, and a subsequent public hearing for mayoral  
16 approval is scheduled for September 27, 2023, and upon  
17 information and belief, no further hearings would be required.

18 Mr. Park would further testify that the parties to the  
19 new lease would work to resolve any outstanding issues by the  
20 effective date, and no circumstance exists that would be a  
21 basis for delaying confirmation of the plan.

22 Your Honor, then I just -- Mr. Park would then testify  
23 as to the various components of Section 1129 of the Bankruptcy  
24 Code and the compliance of the plan with each of those  
25 provisions. So I'm going to go through section by section and

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1 just kind of briefly describe, by way of proffer, the facts  
2 which support confirmation of the plan as it relates to each of  
3 those sections.

4 With respect to Section 1129(a)(1), a review of the  
5 plan, together with the proffer of testimony of Mr. Park, will  
6 show that Bank of Hope has satisfied Bankruptcy Code Section  
7 1129(a)(1), which requires that the plan complies with the  
8 applicable provisions of the Bankruptcy Code. The plan  
9 complies with the mandatory requirements set forth in  
10 Bankruptcy Code Section 1122 and 1123(a), and all plan  
11 provisions are permitted by the applicable subsections of  
12 Bankruptcy Code Section 1123.

13 The plan provides for adequate means for its  
14 implementation through, among other things, the new lease  
15 agreed upon by the City, Bank of Hope, and the approved new  
16 tenant and the agreement of those parties to evenly share  
17 payment of all administrative expenses and priority claims.  
18 Valid business, legal, and factual reasons exist for the  
19 separate classification of each of the classes of claims  
20 created and the treatment under the plan. The claims in each  
21 class are substantially similar to the other claims in the same  
22 class.

23 With respect to Section 1129(a)(2), a review of the  
24 docket --

25 THE COURT: I'm going to jump -- I'm sorry, Mr.

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1 Sullivan. I want to jump in. I'm happy --

2 MR. SULLIVAN: Sure.

3 THE COURT: The proffer, it's great that you're doing  
4 the proffer. I have no problem with your proceeding this way.

5 If this purports to be a summary of the testimony that  
6 Mr. Park would provide, I just don't know that he's competent  
7 to attest to the existence of valid business, legal, and  
8 factual reasons. I mean, I guess he can say -- I guess he is  
9 probably capable to talk about valid business reasons or the  
10 Bank of Hope's actual business reasons or factual reasons, but  
11 I don't know that he's qualified to --

12 MR. SULLIVAN: It's probably more of a legal issue,  
13 Your Honor.

14 THE COURT: -- testify as to the legality, the legal  
15 conclusions (indiscernible) here.

16 MR. SULLIVAN: Yeah, it's probably more of a legal  
17 issue. So to the extent that there are any factual  
18 underpinnings underneath that and that Your Honor wanted to  
19 address, he would certainly be available to address any of  
20 those concerns. And some of these --

21 THE COURT: Okay.

22 MR. SULLIVAN: Some of these, obviously, when you're  
23 going through these 1129 provisions, a lot of them are either  
24 legal or mixed factual and legal. So I understand that to some  
25 extent, he's relying upon what I have told him to a large

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1 extent. And so I just ask you to kind of take it for what it's  
2 worth, that he would be offering whatever business  
3 justifications might exist with respect to each of these  
4 sections of the Bankruptcy Code to ensure compliance with the  
5 plan with each of those provisions.

6 THE COURT: Okay. I'm fine letting you proceed along  
7 the lines you describe. I just want to, I guess, maybe for  
8 record purposes, say I will not accept Mr. Park's legal opinion  
9 as certainly binding on me or necessarily established. I think  
10 the legal conclusions that are --

11 MR. SULLIVAN: Understood, Your Honor.

12 THE COURT: -- advanced are for me to make, not for  
13 him to establish. But you can go right ahead and frame it that  
14 way.

15 MR. SULLIVAN: Understood, Your Honor. It really is  
16 just a foundation for demonstrating a desire and an intent to  
17 comply with each of the provisions. And --

18 THE COURT: Right. No, it's a good --

19 MR. SULLIVAN: I certainly believe that they  
20 (indiscernible) --

21 THE COURT: It's a good organizational device. I'm  
22 just hanging up on this one --

23 MR. SULLIVAN: Okay.

24 THE COURT: -- on the characterization of what exactly  
25 it is that he would be testifying to. So but go right ahead.

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1 MR. SULLIVAN: Understood, Your Honor.

2 THE COURT: And certainly, the framework is helpful.

3 MR. SULLIVAN: I appreciate you butting in and kind of  
4 highlighting that, Your Honor.

5 With respect to Section 1129(a)(2), a review of the  
6 docket and testimony proffered by Mr. Park would establish that  
7 the plan complies with Section 1129(a)(2), which requires that  
8 the proponent of a plan complies with all applicable provisions  
9 of the Bankruptcy Code, including with respect to its  
10 compliance with the requirements governing the solicitation of  
11 acceptances of the plan.

12 The plan proponent Bank of Hope has complied with all  
13 applicable provisions of the Bankruptcy Code. By this Court's  
14 order, dated July 6th, 2023, ECF docket number 189, the  
15 disclosure statement and plan solicitation documents were  
16 approved, and all solicitation package materials were  
17 thereafter transmitted to creditors and other recipients as  
18 required thereby. And that can be reflected in docket entries  
19 199, 200, 201, and 202.

20 Moreover, the filed affidavits of service and the  
21 certification of ballots reflect that Bank of Hope has complied  
22 with the Sections 1125 and 1126 of the Bankruptcy Code, and  
23 this testimony will establish that Bankruptcy Code Section  
24 1129(a)(2) is therefore satisfied.

25 And I get to it a little bit at the end, Your Honor,

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1 or as appropriate, but the certification of ballots is  
2 reflected on the docket as document number 198 and was filed on  
3 August 25, 2023. And it reflects the submission of four  
4 ballots in connection with the plan, three of which were  
5 submitted by Bank of Hope in connection with the various  
6 classes of claims for which it held claims and one by the City  
7 with respect to the class of -- with respect to its claim.

8 And it shows that as a result of the balloting that  
9 the Class 1 secured claim of Bank of Hope, there was one vote  
10 in favor of the plan, which accepted it. There were no Class 2  
11 claims. Class 3(a) is tax claims unimpaired, therefore deemed  
12 to accept. Class 3(b), that's the adequate protection claim of  
13 Bank of Hope, so one claim was voted to accept. No rejections.  
14 Class 4(b), Your Honor, there are two votes received, one by  
15 Bank of Hope and one by the City of New York. Both of those  
16 claims, again, voted to accept the plan, and there were no  
17 rejections. And none of the creditors, Your Honor, elected to  
18 receive Class 4(c) treatment, which was a convenience class  
19 that had been created. And then Class 5, which is the  
20 interestholders, they've been deemed to reject the plan.

21 Next, Your Honor, with respect to 1129(a)(3), Mr. Park  
22 would testify that the plan complies with Section 1129(a)(3) of  
23 the Bankruptcy Code, which requires that the plan was proposed  
24 in good faith and not by any means forbidden by law. The plan  
25 was proposed in good faith and was filed with the legitimate

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1 and honest purpose of maximizing the value of the debtor's  
2 estate and the recoveries to holders of allowed claims in the  
3 order of priority under the Bankruptcy Code. This testimony  
4 will therefore establish that Bankruptcy Code 1129(a)(3) has  
5 been satisfied.

6 With respect to Section 1129(a)(4), a review of the  
7 plan shows that it provides for the payment of all allowed  
8 administrative expenses and includes a third administrative  
9 expense bar date. In addition, the fees of estate  
10 professionals are subject to the approval of the Court. Such  
11 testimony will therefore establish that Bankruptcy Code Section  
12 1129(a)(4) has been satisfied.

13 With respect to Section 1129(a)(5), Mr. Park would  
14 testify that the Bank of Hope's plan supplement, which was  
15 filed at docket number 195 and the related exhibits, identifies  
16 GlassRatner Advisory & Capital Group LLC doing business as B.  
17 Riley Advisory Services as the plan administrator and that both  
18 the plan and plan supplements speak to the relevant terms of  
19 its administration. Mr. Park would also provide an update on  
20 the entry into an agreement between Bank of Hope, only in its  
21 capacity as planned proponent and the proposed plan  
22 administrator. A form of agreement has been circulated to the  
23 U.S. Trustee's Office, as well as -- as well as, I believe,  
24 counsel for the City. And I'm not a hundred percent sure if  
25 counsel for the debtors received that yet, but I think we're

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1 still waiting for comments from the U.S. Trustee's office. So  
2 that progress has been made on the plan administrator  
3 agreement, and we're hoping that we can finalize that  
4 imminently.

5 With respect to Section 1129(a)(6), this subsection is  
6 inapplicable to the plan. Is therefore satisfied.

7 Section 1129(a)(7), Your Honor, as set forth in the  
8 plan with respect to each impaired class of claims or interest,  
9 each holder of a claim or interest has accepted the plan as  
10 described a little while ago or will receive or retain under  
11 the plan on account of such claim or interest property of a  
12 value that is not less than the amount such holder would  
13 receive or retain if the debtor was liquidated under Chapter 7  
14 of the Bankruptcy Code. Creditors will not receive less than  
15 they would receive in a Chapter 7 liquidation. In a Chapter 7,  
16 the lease would be rejected and the creditors would receive no  
17 distribution.

18 Further, the plan maximizes the amounts which may be  
19 recovered for such creditors and allowed claims. In a Chapter  
20 7 liquidation, there would also be increased fees and costs and  
21 expenses, including commissions arising from in the connection  
22 with services rendered by a Chapter 7 trustee and their  
23 professionals. Accordingly, each nonaccepting holder of a  
24 claim or interest under the plan would receive, on account of  
25 such claim or interest, property with at least as much value as



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1 such holder would be entitled to receive in a hypothetical  
2 Chapter 7 liquidation. Therefore, such testimony would  
3 establish that the plan satisfies the best interest test set  
4 forth in Section 1129(a)(7) of the Bankruptcy Code.

5 With respect to Section 1129(a)(8), as described a  
6 short while ago, as set forth in the certification of ballots,  
7 Classes 1, 2, 3(a), 3(b), 4(a), and 4(b) have accepted the plan  
8 or unimpaired by the plan and deemed to have accepted the plan.  
9 In addition, there are no members of Class 4(c) because no one  
10 elected to receive Class 4(c) treatment.

11 Class 5 interest is deemed to have rejected the plan,  
12 as such class is not receiving or retaining any property under  
13 the plan. The plan does not discriminate unfairly and that  
14 interests in Class 5 or dissimilar to other classes, and the  
15 plan segregation of Class 5 has a rational basis. Moreover,  
16 because senior classes are not receiving more than the full  
17 value of their claims and no interest that is junior to Class 5  
18 will receive or retain any property under the plan, the fair  
19 and equitable standard has been satisfied.

20 Accordingly, notwithstanding the deemed rejection by  
21 Class 5, the plan can still be confirmed. Therefore, such  
22 testimony would establish that the plan does not discriminate  
23 fairly against Class 5 and is fair and equitable, and therefore  
24 Bankruptcy Code Section 1129(b) is satisfied.

25 With respect to Section 1129(a)(9), the plan provides

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1 that all holders of allowed priority claims, including priority  
2 state tax claims, party nontax claims, and administrative  
3 claims will be paid in accordance with Section 1129(a)(9),  
4 except to the extent that the holder of such claims has agreed  
5 to different treatment. Therefore, the plan satisfies Section  
6 1129(a)(9) of the Bankruptcy Code.

7 With respect to Section 1129(a)(10), at least one  
8 impaired class of claims entitled to vote in the plan has  
9 accepted the plan. As set forth above, impaired Classes 1,  
10 4(a), and 4(b) have accepted the plan. Therefore, the plan  
11 complies with Section 1129(a)(10) of the Bankruptcy Code.

12 With respect to Section 1129(a)(11), the plan is a  
13 liquidating plan. Mr. Park would testify that he believes  
14 there are sufficient means to implement the plan as set forth  
15 therein, specifically including the funding by the approved new  
16 tenant Broadway East Group as set forth in the plan, the plan  
17 supplement, and the terms of the new lease to make the  
18 distributions to the classes as set forth in the plan and the  
19 allowed claims in accordance with the priorities under the  
20 Bankruptcy Code. The plan for liquidation is sustainable,  
21 provides adequate means for implementation, and is feasible.  
22 Thus, no other liquidation of the debtor is anticipated or  
23 likely.

24 Further, the plan was extensively negotiated and  
25 discussed with various parties and interests. Moreover,

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1 because the plan is a liquidating plan, such plan provides for  
2 payment of allowed claims in the order of -- in order of  
3 priority under the Bankruptcy Code. In addition, Bank of Hope,  
4 the City, and approved new the tenant have agreed to equally  
5 share in the payment of a lot of administrative expenses and  
6 priority claims and such allowed expenses and priority claims  
7 will be paid in full.

8 The evidence establishes that there is more than  
9 reasonable probability that the provisions of the plan can be  
10 performed, and so the plan satisfies the Bankruptcy Code  
11 Section 1129(a)(11).

12 With respect to Section 1129(a)(12), the plan provides  
13 for the payment of all fees payable to the U.S. Trustee  
14 pursuant to 28 U.S.C. 1930, and the plan therefore complies  
15 with Section 1129(a)(12) of the Bankruptcy Code.

16 Sections 1129(a)(13), (14), and (15), Your Honor, we  
17 don't believe those provisions are applicable and so are deemed  
18 satisfied.

19 With respect to Section 1129(a)(16), Mr. Park would  
20 testify based on his knowledge, information, and belief, and  
21 conversations with outside professionals and representatives of  
22 the City and Broadway East Group, to the extent that this  
23 provision is applicable to the transfer of the estate's  
24 interest in the lease, which we don't actually believe it does,  
25 but to the extent that it is, as set forth above, the City is

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1 attaining all required approvals under applicable nonbankruptcy  
2 law to the fact the terms of the new lease.

3 With respect to Section 1129(b), Your Honor, Mr. Park  
4 would testify that under the plan, Class 5 interest is  
5 dissimilar to the other classes, which are all claims, and the  
6 plan segregation of those claims is the rational basis. Class  
7 5 consists solely of interests. Accordingly, the plan does not  
8 discriminate unfairly against the rejecting class, thereby  
9 satisfying this requirement of Section 1129(b) of the  
10 Bankruptcy Code.

11 Moreover, the plan satisfies the additional  
12 requirement of Section 1129(b), insofar as there is no class  
13 junior to Class 5 that would receive or retain any property  
14 under the plan. And again, no party has claimed that there is  
15 unfair discrimination in the plan or that the plan is not fair  
16 and equitable. Such evidence would establish that the plan is  
17 therefore confirmable under Section 1129(b) (sic) as the sole  
18 rejecting class.

19 With respect to Section 1129(c), Mr. Park would  
20 testify that the plan is the sole currently -- is the sole plan  
21 currently pending before the Court, and the plan is the only  
22 confirmable plan that has been presented to the Court in this  
23 case, with debtor's plan already having been rejected.

24 With respect to Section 1129(d), Mr. Park would  
25 testify that the plan does not have, as one of its principal

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1 purposes, the avoidance of taxes or avoidance of requirements  
2 of Section 5 of the Securities Act of 1933, nor is Bank of Hope  
3 aware of any filing by any governmental agency or any other  
4 party in interest asserting such avoidance.

5 And then, Your Honor, we would testify that with  
6 respect to the exculpate --

7 THE COURT: You said "we would testify".

8 MR. SULLIVAN: I'm sorry, Your Honor. Mr. Park would  
9 testify that the release and exculpation clauses in the plan  
10 are essential to the plan, appropriate under applicable law,  
11 and constitute a proper exercise of the Bank of Hope's business  
12 judgment. The release and exculpation provisions were proposed  
13 in good faith, were formulated following arm's-length  
14 negotiations with key constituents, and are appropriately  
15 limited in scope to achieve the overall purpose of the plan.

16 Each released and exculpated party made significant  
17 contributions to the Chapter 11 case, including with respect to  
18 the negotiation and implementation of the new lease and other  
19 elements of the plan. Each released and exculpate party  
20 participated in good faith and in compliance with applicable  
21 law with regard to the solicitation of and distribution of  
22 consideration pursuant to the plan and therefore is not -- on  
23 account of such distribution shall not be liable at any time  
24 for the violation of any applicable law, Rule, or regulation  
25 governing the solicitation of acceptances or rejections of plan

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1 or such distributions made pursuant to the plan.

2 Director in the Chapter 11 case fully supports the  
3 exculpation provisions, which are appropriately tailored to  
4 protect the released and exculpated parties from inappropriate  
5 litigation arising from their participation in the Chapter 11  
6 case and are consistent with the Bankruptcy Code and applicable  
7 law.

8 For the Bank of Hope and the United States Trustee,  
9 they agreed to the following language to replace the existing  
10 exculpation clause in the plan. The new language would state,

11 "To the fullest extent permitted under Sections 1123  
12 and 1125 of the Bankruptcy Code and as provided  
13 herein, neither the City, Bank of Hope, nor any of  
14 their respective officers, directors, employees and  
15 other agents, financial advisors, attorneys and  
16 accountants, or the respective successors-in-interest,  
17 who have been actively involved in the bankruptcy  
18 case, shall have any liability to any holder of any  
19 claim or interest for any act or omission between the  
20 petition date and the effective date in connection  
21 with or arising out of the negotiation, preparation,  
22 and pursuit of confirmation of the plan, the  
23 consummation of the plan, the administration of the  
24 plan, plan solicitation for the property to be  
25 distributed under the plan, except for liability based

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1 upon actual fraud, willful misconduct, or gross  
2 negligence, as determined in a final order by a court  
3 of competent jurisdiction. For the avoidance of  
4 doubt, nothing in the plan shall limit the liability  
5 of attorneys to their respective clients pursuant to  
6 Rule 1.8(h) of the New York Rules of Professional  
7 Conduct, 22 N.Y.C.R.R. Section 1200, or effect any  
8 criminal enforcement action."

9 The lone remaining -- Mr. Park would testify that the  
10 lone remaining issue with respect to the United States  
11 Trustee's objection is as to whether the Bankruptcy Code  
12 Section 503(b) is applicable to payment of Bank of Hope's  
13 professionals. As set forth in Bank of Hope's reply to the  
14 objection, ECF docket number 173, Bank of Hope believes that  
15 such payments would not be subject to Section 503(b), as the  
16 agreement between Bank of Hope, the City, and the approved new  
17 tenant to share responsibilities for such fees and expenses  
18 means they will have no impact upon the debtor or its state,  
19 given that the amount of fees paid will have no impact upon the  
20 recovery to any creditor, other than Bank of Hope and the City.  
21 Moreover, any recovery available to other creditors would be  
22 carved out of the recovery that would otherwise have been made  
23 payable to Bank of Hope and the City.

24 For these reasons, Bank of Hope believes this last  
25 remnant of the United States Trustee's objections should be

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1 overruled. Nevertheless, Bank of Hope has filed an  
2 administrative expense claim with respect to the fees and  
3 expenses of its legal professionals related to the plan through  
4 the second administrative expense bar date, and it will file  
5 another administrative expense claim by the third  
6 administrative expense bar date and additionally can provide  
7 updates as necessary to the Court and the United States Trustee  
8 on professional fees and expenses related to towards  
9 confirmation and execution of the plan.

10 And that is the conclusion of the proffer, Your Honor.

11 THE COURT: Okay. So I think I guess what you'd like  
12 me to do is accept that as a proffer of testimony that would be  
13 given by Mr. Park if he were called, right? And just and --

14 MR. SULLIVAN: Correct, Your Honor.

15 THE COURT: Okay. Does any party object to my  
16 accepting the proffer as a summary of testimony that would be  
17 offered by Mr. Park, were he called today?

18 And let me just note that as I foreshadowed at the one  
19 point where I interrupted Mr. Sullivan's presentation on the  
20 proffer that contained both factual information and then a lot  
21 of legal argumentation or characterization, I would not accept  
22 as factual evidence the legal conclusions embedded in that  
23 discussion. I think that what -- but it's helpful as a framing  
24 mechanism, and what I would contemplate doing is accepting the  
25 factual content of the proffer, with that explicit proviso.



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1           So with that observation, does anyone have any  
2       objection to reliance on the proffer that's just been delivered  
3       as the factual predicate for the confirmation hearing today?

4           MR. BRUH: Your Honor, Mark Bruh for the United Staes  
5       Trustee. We appreciate the Court's proviso regarding the  
6       proffer offered by Mr. Park in connection with confirmation  
7       because we do have concerns in connection with 1129(a)(4) as  
8       well as 1129(a)(5) because we just got the plan administrator  
9       agreement this morning, and we're going through it. And we  
10      just, we believe we will reserve our rights for argument on  
11      those issues. As Your Honor said, that seemed --

12          THE COURT: Got it. Yeah. Let me make clear, I'm  
13      really just trying to establish the evidentiary basis for the  
14      hearing, and then this is without prejudice to any parties'  
15      ability to make whatever argument they want on the legal issues  
16      raised.

17          So I'm hearing you say that on that understanding  
18      you're okay. Yeah. Is that right, Mr. Bruh?

19          MR. BRUH: Yeah. We don't intend to cross Mr. Park.

20          THE COURT: Okay. That was going to -- you're  
21      anticipating my next question.

22          Nobody has said they object to reliance on the proffer  
23      as stated. So let me ask now, does anyone wish to cross-  
24      examine Mr. Park?

25          Okay. I paused, and no one said yes. So I will,

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1 again, accept the proffer as delivered as the evidentiary basis  
2 for the confirmation hearing today, subject to my comment just  
3 made that I don't -- that the proffer included matters, the  
4 content that is more in the nature of legal argumentation.

5 And so I will accept the proffer as factual to the  
6 extent that it is an evidentiarily -- relevant to the extent  
7 it's not pure legal conclusion or legal argumentation. To the  
8 extent it's argumentation, I just understand it to be a  
9 statement of the Bank of Hope's position and support of  
10 confirmation. But with that, the proffer is received or  
11 incorporated into the record as the factual underpinnings of  
12 the confirmation proceeding today.

13 And I'll turn it back to Mr. Sullivan.

14 MR. SULLIVAN: Thank you, Your Honor. So if Your  
15 Honor had any questions on any of the legal aspects, I'd be  
16 happy to address them.

17 But I guess I would just point out that I believe the  
18 objections that were raised, one, by the U.S. Trustee's office,  
19 which as I had mentioned earlier, we've resolved almost all of  
20 it. It's just, I believe, is the 503(b) issue with respect to  
21 my firm's professional fees is the lone remaining issue.

22 And as, I guess, Mr. Bruh also kind of mentioned, we  
23 are still addressing the agreement. I think we're very close  
24 to actually -- there was some back and forth earlier this  
25 morning, but we're pretty close.

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1 THE COURT: All right.

2 MR. SULLIVAN: We should have some time --

3 THE COURT: Restate what's the agreement, what  
4 agreement you're referring to? I just want to make sure we  
5 have clarity in that.

6 MR. SULLIVAN: Yeah, we haven't filed it on the  
7 record, but as Your Honor may recall, one of the exhibits in  
8 the plan supplement -- and the plan supplement, for the record,  
9 is docket number 195. So Exhibit 3 to the plan supplement  
10 referenced key terms that would be included within the plan  
11 administrator agreement, including the identity of the plan  
12 administrator as GlassRatner Advisory & Capital Group LLC doing  
13 business as B. Riley Advisory Services. It also described what  
14 they would be doing and described what their compensation would  
15 be and things of that nature.

16 So what the agreement purported to do would be to just  
17 kind of crystallize in a little bit more clear form exactly the  
18 duties of the plan administrator and a little bit more detail  
19 in terms of some of the other items, Your Honor. So that  
20 agreement was circulated to the U.S. Trustee's office, and the  
21 U.S. Trustee's office had a couple of questions.

22 So my guess is we're not going to be able to resolve  
23 that issue today, but certainly, prior to the effective date, I  
24 believe that we'll be able to get through it. I fair amount of  
25 confidence that the plan and -- the proposed plan administrator

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1 will work with the U.S. Trustee's office and my office to  
2 resolve any concerns that the U.S. Trustee's office has with  
3 respect to the language of that agreement.

4 THE COURT: Is that an impediment to confirmation  
5 today? Do I have to wait for that to be resolved?

6 MR. SULLIVAN: I don't think so, Your Honor.  
7 Certainly, if we have any issues, we can come back to Your  
8 Honor. We do have -- I don't believe that the plan will go  
9 effective for a few weeks. So we do have time to try to work  
10 through those types of issues.

11 In any case, the plan supplement did identify the key  
12 terms of the plan administrator -- of the plan administrator's  
13 retention. And one of the provisions of the proposed form of  
14 order that we submitted to Your Honor would authorize us to  
15 enter into that agreement, so long as it's consistent with  
16 what's been represented to be the key terms. And we certainly  
17 wouldn't sign anything without having the U.S. Trustee's sign-  
18 off on it. And to the extent that we were not able to reach  
19 some consensual agreement with the U.S. Trustee' office, then  
20 we could always tee it up with Your Honor to resolve any  
21 disputes. But I'm not expecting any at this point in time,  
22 Your Honor.

23 THE COURT: I mean, I think I am not -- well, let me  
24 say something specific to that, and then I'll have some other  
25 questions or things I want to focus on.

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1           On that, are you envisioning sort of a further  
2     condition to effectiveness of the plan is arriving at an  
3     acceptable form of agreement?

4           MR. SULLIVAN: I guess that -- I guess we could word  
5     it that way, Your Honor.

6           THE COURT: Or it could be that submission of the  
7     confirmation order or potential approval of a confirmation  
8     order would be deferred until that's nailed down. I don't know  
9     how long you're talking about taking on that process. I mean,  
10    that's more comfortable to me, and that also lets --

11          MR. SULLIVAN: Okay.

12          THE COURT: -- other parties-in-interest have a crack  
13    at seeing it. And if there's a problem with it, they can  
14    comment.

15                I thank the world of the U.S. Trustee's office, but I  
16    don't want to offload my judicial responsibility to decide  
17    whether or not something's okay on them. I think that would be  
18    wrong. And plus, I'm not comfortable with that. And I think  
19    it is consistent with due process to let other parties-in-  
20    interest know what a constituent element of the plan is going  
21    to be before they're stuck with it, as opposed to just having  
22    it a blank check, I think.

23                I guess you would tell me, don't worry, Judge, because  
24    it'll be consistent with the key terms here. But if they're  
25    material enough that you're arguing about it, that sort of

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1 suggests it's material.

2 MR. SULLIVAN: I wouldn't say we're arguing about  
3 anything, Your Honor. We only just serve the U.S. Trustee's  
4 office with it very early this morning. So I don't necessarily  
5 think that there's going to be any issue to fight over, but I  
6 can't tell you definitively that there won't be  
7 (indiscernible) --

8 THE COURT: All right. Yeah. So I have a couple of  
9 other issues I'll want to get to. Here's what I suggest on  
10 this issue, and I want to hear from Mr. Bruh.

11 But my thought is I will let you keep working the  
12 issue. Try to arrive at a consensual resolution of that. Give  
13 notice to certainly all counsel or parties-in-interest who are  
14 attending the hearing today of where you land. And then if  
15 nobody objects, I'll consider that issue resolved for purposes  
16 of confirmation, and then we can go forward.

17 I think that is consistent with due process and really  
18 a properly functioning adversary process that lets parties-in-  
19 interest identify problems, if they exist, and on an outcome  
20 that as of right now doesn't exist. And then I expect there's  
21 a good shot you'll resolve your issues. And if you do, I'll  
22 probably be ready to approve a suitable plan, including that  
23 fix when it's ready.

24 Okay. Is that something you can live with, Mr.  
25 Sullivan?

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1 MR. SULLIVAN: Yeah, that's fine, Your Honor.

2 THE COURT: Okay. So let me raise --

3 Mr. Bruh, does that work for you?

4 MR. BRUH: Your Honor, I did look at the plan  
5 administrator agreement this morning. I haven't had a thorough  
6 read of it, and I appreciate the Court's comments today. There  
7 are a couple of technical issues which I think we can get over.

8 But there is an exculpation provision that is  
9 programmatic to our office, and that's the elephant in the room  
10 with the agreement. And I don't know if that's something  
11 that's going to be resolved as easily as the (indiscernible).

12 THE COURT: Okay. So exculpation of whom?

13 MR. BRUH: The plan administrator, and Mr. Sullivan  
14 and I were pretty intently and extensively yesterday to come to  
15 a consensual provision, which he read into the record today,  
16 which was agreed upon between and among the parties. And this  
17 seems to expand upon it, and --

18 THE COURT: Okay.

19 MR. BRUH: -- we feel (indiscernible) programmatic.

20 MR. SULLIVAN: Well, I would view that as a separate  
21 issue because the exculpation provision that Mr. Bruh and I  
22 were sort of negotiating dealt with the parties in connection  
23 with the implementation of the plan, primarily, right, between  
24 the --

25 THE COURT: Right.

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1 MR. SULLIVAN: -- petition date and the effective date  
2 of the plan. So the plan administration agreement doesn't go  
3 in effect until the effective date of the plan. So I don't  
4 think the exculpation they're looking for really fits within  
5 what we've been discussing in the context of the plan. So  
6 they're just --

7 THE COURT: Right.

8 MR. SULLIVAN: -- looking for some other kind of -- I  
9 guess it's really more akin to some type of indemnity or some  
10 other kind of -- and I do think that they'd be willing to kind  
11 of negotiate with the U.S. Trustee's office to try to come to a  
12 mutual agreement on that. So again, I can't predict with one  
13 hundred percent certainty that it will get resolved, but I do  
14 think that there seems to be an openness to discuss that and  
15 try to work through those issues.

16 THE COURT: Okay. Look, if there's going to be a  
17 principled scope of exculpation issue as to an agreement with  
18 the plan administrator -- proposed agreement with the plan  
19 administrator that isn't even yet a nonmoving target, I think I  
20 need to probably reserve the possibility of ruling with respect  
21 to that issue.

22 I know exculpation issues are a big programmatic issue  
23 for the U.S. Trustee's office, which I often deal with. I'm  
24 ready to -- I was all ready to rule with respect to the  
25 exculpation issues that were made known to me before this



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1 moment. And I think we can -- so I think we can get through  
2 other aspects of the plan and confirmation but reserve for  
3 future discussion or ruling if necessary, really, anything  
4 involving that's currently unresolved regarding the plan  
5 administrator agreement and retention. Okay.

6 So that could be either the 503(b) issue you flagged  
7 or the scope of exculpation or whatever or equivalent  
8 protections that you're trying to get afforded to the plan  
9 administrator. I think I just need to reserve on that until  
10 you've had a chance to develop the issues further, reach  
11 agreement, which then I will have to substantively satisfy  
12 myself with anyway. Or if you don't have agreement, I'll have  
13 to adjudicate your dispute. Right. That sound right?

14 I'll ask Mr. Bruh first for a change. Mr. Bruh, does  
15 that sound right to you?

16 MR. BRUH: That's fine, Your Honor.

17 THE COURT: And Mr. Sullivan, I don't see how I can do  
18 anything more than that, but do you want to push back on that  
19 (indiscernible)?

20 MR. SULLIVAN: Understood, Your Honor.

21 THE COURT: Okay.

22 MR. SULLIVAN: Understood.

23 THE COURT: So let me ask -- I will say, let me  
24 memorialize that I know from the disclosure statement hearing  
25 and papers filed in connection with it that the U.S. Trustee's

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1 office had an objection to the plan's exculpation provision.

2 Am I right? Has that been resolved other than with  
3 respect to the plan administrator now, Mr. Bruh? Is that U.S.  
4 Trustee's office's view?

5 MR. BRUH: Your Honor, yes. I mean, I believed that  
6 it was a hundred percent resolved, as, like, we negotiated  
7 yesterday, and then I saw this agreement today, as the  
8 exculpation provision Mr. Sullivan read into the record was  
9 what we agreed to yesterday after a series of back and  
10 forths so --

11 THE COURT: Okay. So let me say, this is going to be  
12 a bite-sized mini -- a ruling, bite-sized mini ruling by me.

13 I reviewed the exculpation provision as it was  
14 included in the plan and then in turn subject as further  
15 modified as read into the record today, and I'm satisfied that  
16 they're appropriate and permissible, and so I'll approve that.  
17 Specifically, I have taken a broader view of what's permitted,  
18 and that exculpation needn't be limited solely to estate  
19 fiduciaries, citing, among other things, the Aegean Marine and  
20 Latam decisions, which I believe are correctly decided. So I'm  
21 glad to see that you worked together and reached agreement, and  
22 I will be comfortable with the outcome as described on the  
23 record today on exculpation.

24 So let me ask, if I can, Mr. Sullivan, really, the two  
25 main questions I had coming into this. One is can you give me

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1 clarity on what is the status of debtor's lease of the premises  
2 from the City now and what exactly is happening with respect to  
3 that lease with the -- whatever it's called. You're calling it  
4 approved new tenant or the East Broadway Group.

5 MR. SULLIVAN: Correct, Your Honor. So and I'll ask  
6 Mr. Kass from the City, counsel for the City, to chime in  
7 afterwards if I may misstate anything because some of the  
8 information I'm about to tell you I learned or received from  
9 him.

10 So my understanding is that the lease has not been  
11 signed yet. The City is waiting until after these two  
12 additional community board types of meetings before signing the  
13 lease with the approved new tenant, the --

14 THE COURT: Hang on. Let me --

15 MR. SULLIVAN: -- Broadway East Group.

16 THE COURT: Okay. Let me ask -- let me clarify my  
17 question. What I wanted to know is the status of debtor's  
18 lease, originally signed in -- I guess it was '85 or so and  
19 then revised in '95 and which was a leasehold interest that was  
20 held by the debtor, certainly as of the petition date and the  
21 commencement of the case. And then there's been a long  
22 history. There was one order saying it was going to be deemed  
23 rejected if the debtor didn't accomplish certain things by a  
24 date certain. Then there was a period of further extensions of  
25 that deadline. Then, from my review of the record, the status

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1 of the lease seemed to slide into a kind of a nebulous status.

2 So it's unclear to me if that earlier order saying it  
3 was to be deemed rejected took effect or did not. And so I'm  
4 trying to understand the status of the lease vis-a-vis the  
5 debtor.

6 MR. SULLIVAN: Okay. So yeah, my understanding, Your  
7 Honor, is that the lease is going to be assumed and assigned to  
8 the approved new tenant Broadway East Group, as modified by the  
9 terms of the new lease that was attached to the plan supplement  
10 so --

11 THE COURT: Okay. Thank you. Yeah, I've reviewed  
12 that. I've reviewed the proposed lease document attached to  
13 the plan supplement, and which is at least generally consistent  
14 with the term sheet that was previously submitted in connection  
15 at the time of the disclosure statement, I think. Right. So  
16 okay.

17 So but what I really wanted to understand is so  
18 mechanically, or as a matter of bankruptcy law, we have a lease  
19 that, in your view, the parties' view is continues and in force  
20 as between the City and the debtor and that the plan is going  
21 to cause the assumption and assignment of that lease, whereupon  
22 it will be modified by agreement between the City and East  
23 Broadway Group?

24 MR. SULLIVAN: Right. I think it's -- I think it's  
25 actually Broadway East Group --

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1 THE COURT: Oh, sorry.

2 MR. SULLIVAN: -- LLC.

3 THE COURT: Yeah, the new tenant. I'll just say the  
4 new tenant.

5 MR. SULLIVAN: Okay.

6 MR. KASS: Yeah. Your Honor, I don't mean to step on  
7 anybody's lines, but this is Zachary Kass from the New York  
8 City Law Department on behalf of the City of New York, if I may  
9 be heard on this issue.

10 THE COURT: Yes, please. Yes. Thanks, Mr. Kass.  
11 Nice to see you. Go ahead.

12 MR. KASS: Thank you. Nice to see Your Honor, as  
13 well.

14 Not to split hairs on it, but I believe it's  
15 appropriate to say that the Court's -- well, the stipulation  
16 and the Court's prior order that said the lease would be deemed  
17 rejected did go into effect. However, I think, at least in the  
18 City's view, and I believe in the other parties' view as well,  
19 we were relying on those bankruptcy cases in this district and  
20 elsewhere that say that the rejection of a lease or a executory  
21 contract, pursuant to the Bankruptcy Code, does not  
22 automatically terminate all the interests of the debtor in the  
23 leased property until and unless the Court so holds.

24 And again, I think what we've been trying to do is  
25 walk that tightrope and say that whatever interest of the

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1 debtor remained after the rejection of the lease, by virtue of  
2 the plan provisions, will be assigned eventually to the new  
3 tenant. And there are a couple of mechanical steps which will  
4 take place in order to get the new lease in place with the new  
5 tenant.

6 But I think, from a bankruptcy perspective, what the  
7 Court is being asked to do at this point is approve of the  
8 assignment of whatever's left of the debtor's interest in the  
9 leasehold, given that there has been a -- I'm sorry, given that  
10 there has been a rejection of the lease to the new tenant.

11 THE COURT: The (indiscernible) order calls it a  
12 deemed rejection, right, or is it shall be deemed rejected?

13 MR. KASS: Correct, Your Honor.

14 THE COURT: Yeah.

15 MR. KASS: Correct. That's correct.

16 THE COURT: Okay. And so does the City view the lease  
17 with Broadway East Group, LLC as a new lease or as a  
18 modification of an existing lease?

19 MR. KASS: It's a modification -- well, it's a  
20 modification and restatement of the lease.

21 THE COURT: Okay. Okay. So I think -- well, that's  
22 helpful. I just wanted clarity on that.

23 I will say, I gave some thought to whether a nondebtor  
24 plan proponent has authority to assume an existing executory  
25 contract, and I think the answer to that is yes. I did some

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1 independent research. Actually, there are some visiting judges  
2 in town, and one alerted me to a helpful case. So I'm going to  
3 cite it, okay, which is not exactly identical, but as support  
4 for the proposition that a nondebtor plan proponent is  
5 authorized to assume an executory contract held by the debtor  
6 under the Bankruptcy Code.

7 And that case is In re: Nickels Midway Pier LLC,  
8 that's N-I-C-K-E-L-S, Midway, Pier, P-I-E-R, LLC. The citation  
9 is at 452 B.R. 156, U.S. District Court of the District of New  
10 Jersey 2011. And the specific holding was that the Bankruptcy  
11 Code did not limit power to assume executory contracts solely  
12 to the trustee or debtor-in-possession, and therefore a Chapter  
13 11 plan proposed by, in that case, a creditor would require  
14 debtor to assume an executory contract.

15 And so I think that's the implicit -- I agree with the  
16 analysis of that case, and I think that appears to me to be  
17 analytically what's happening here.

18 Mr. Kass' helpful explanation was that whatever it is  
19 that the debtor can -- whatever interest the debtor continues  
20 to have in the leasehold interest or the possessory interest in  
21 the premises is being assumed and assigned by operation of the  
22 plan. And ultimately, assuming the plan goes effective after  
23 confirmations are received, then the lease will be assigned to  
24 the new tenant as a matter of bankruptcy law, coupled with  
25 whatever contractual arrangements are worked out between the

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1 City and the new tenant.

2 Let me ask if anybody thinks that is a mistaken legal  
3 assessment of how this works and what's happening here. I'll  
4 invite -- does the new tenant want to be heard on that?

5 MR. SOONG: Thank you, Judge. This is Arthur Soong  
6 for the new tenant Broadway East Group.

7 I do understand the issues that are being raised. I  
8 did want to confirm -- and I do have one of my members here. I  
9 do want to confirm that Broadway East Group remains committed  
10 and fully prepared to fulfill all the financial and other  
11 obligations of the term sheet, of our final -- of our best  
12 final bid of April 11th, 2023, our term sheet, which has been  
13 filed with the Court on May 18th, 2023, as well as the revised  
14 lease, which admittedly is not yet signed but has been  
15 negotiated between us and the City and also filed with the  
16 court.

17 We remain fully prepared and fully able to comply with  
18 all of the terms. I do understand the issues that are -- the  
19 issue being discussed as far as either rejection of the  
20 existing lease or an assumption and assignment of the existing  
21 lease. And we are fine with the presentation, both of Bank of  
22 Hope and by the City. I do also have one of my clients with me  
23 in the shadows here.

24 THE COURT: Okay. Yeah, that's fine. I can see a  
25 blurry figure over your shoulder on the Zoom screen. That's



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1 fine. Nice to see you there.

2 MR. SOONG: (Indiscernible).

3 THE COURT: And so let's just -- yeah, I don't think I  
4 need to hear -- I just wanted to make sure as a legal matter  
5 that Broadway East Group understood and did not see a problem  
6 with the legal analysis I just articulated. That part was --  
7 you may be neutral, but if you have a problem, please identify  
8 it.

9 MR. SOONG: Thank you, Judge. We do understand, and  
10 we have no problem.

11 THE COURT: Okay. Does anybody else want to raise any  
12 concern with the analysis I just described?

13 All right. I paused, and no one said yes. So that's  
14 fine. So I am going to -- this may be a bit of a messy  
15 transcript because that articulates my analysis of that issue,  
16 and that will be a component of my ruling, ultimately, on  
17 confirmation.

18 So let me ask my other question, Mr. Sullivan, which  
19 really is feasibility under 1129(a)(11). And I'm not sure that  
20 this is a thing that should give me pause, but I know the  
21 effectiveness of the plan is conditioned on ultimately  
22 successfully navigating this various City approval  
23 requirements. And the proffer tells me those are expected to  
24 occur in September, or at least the two hearings are expected  
25 to occur in September, which is the current month. So within

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1 fifteen days, I think, is the second one.

2 And I know it looks like the plan is -- there's a  
3 provision that the plan will become null and void in the event  
4 required approvals are not achieved unless the parties agree  
5 otherwise. So my question is, is that consistent with  
6 1129(a)(11) and the essentially feasibility requirements? And  
7 you might tell me not applicable. You might tell me, yes, it's  
8 perfectly consistent and here's why. I'm just looking for  
9 comfort as to why 1129(a)(11) isn't an impediment.

10 MR. SULLIVAN: I don't believe it's an impediment,  
11 Your Honor. I mean, based on my -- based upon my understanding  
12 as to how these hearings go and my understanding of how the  
13 City approaches it, I've been told that these hearings are not  
14 an impediment, that they hear the concerns of these parties,  
15 but they don't necessarily have the ability to veto the  
16 transaction.

17 It may be best if Mr. Kass sort of describes it from  
18 his perspective because I think he's a little bit more familiar  
19 with exactly how these matters go. But so maybe it would be  
20 advisable to let him discuss it.

21 But my general understanding, Your Honor, is that  
22 everyone involved in the transaction fully expects that the  
23 lease will be signed shortly after those hearings and that  
24 nothing that takes place at those hearings should pose any type  
25 of impediment.

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1 THE COURT: Okay. So I'm happy to hear from Mr. Kass.  
2 But first, so I'm hearing what you're saying is that I should  
3 conclude that it's at least sufficiently probable that the  
4 required approvals will be achieved. You're just in the course  
5 of a governmental review process, and that given that, there's  
6 a sufficient likelihood that I can conclude that the plan will  
7 succeed, will be successfully effectuated as designed. Right.  
8 That's basically the --

9 MR. SULLIVAN: Correct, Your Honor.

10 THE COURT: -- conclusion you want me to make? Okay.

11 Mr. Kass, you here? You're not visible to me on my  
12 screen.

13 MR. KASS: Yes. Again, Zachary Kass, on behalf of the  
14 City. I apologize, Your Honor, again for my computer problem.  
15 So in order to retain the voice portion, I did have to turn off  
16 my camera.

17 THE COURT: Okay. That's fine.

18 MR. KASS: So I apologize. However, I agree with Mr.  
19 Sullivan that the current approval process that the City is  
20 engaged in should not be considered a process that will make  
21 the plan not feasible at this point.

22 I know that -- what has happened in prior cases, as  
23 they say on late-night television, doesn't necessarily ensure  
24 the same results in these cases. But there have been several  
25 cases in which bankruptcy courts have allowed the parties to

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1 confirm a plan which envisioned this dual track, in other  
2 words, that bankruptcy court approval was necessary as well as  
3 certain governmental approvals were necessary.

4 And the fact that the governmental approval process  
5 would take somewhat longer than the bankruptcy process didn't  
6 affect the feasibility of the plan, per se. The bankruptcy  
7 courts, again, at least in those cases, were able to say that  
8 the provisions of the plan, the transactions envisioned by the  
9 plan, were appropriate and rational and capable of fruition.  
10 And so that, having an approval process that would take -- that  
11 was on a longer runway was not a feasibility issue.

12 THE COURT: Okay. Thanks. I'm going to ask you an  
13 unfair question. (Indiscernible) it's not unfair. You may not  
14 be -- I'm going to ask you a question you may not be able to  
15 answer. How quickly are the remaining reviewing governmental  
16 entities, I think it's two stages, likely to decide?

17 MR. KASS: Well, we are hopeful that -- the borough  
18 board is scheduled for September 21st. We're hopeful that the  
19 borough board will act, either at that meeting or shortly  
20 thereafter.

21 The mayoral hearing is then scheduled for -- the  
22 mayoral approval hearing is then scheduled for September 27th.  
23 Again, we're hopeful that the approval will be obtained, either  
24 at that hearing or very shortly thereafter. Once that approval  
25 is -- the mayoral hearing approval, once that is in place, then

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1 it goes to the mayor's office of contract services for the  
2 mayor to sign off on, and that process can be done fairly  
3 quickly. I was told yesterday afternoon that it can be done in  
4 a day or two. But it seems to me that a time frame of another  
5 week after the mayoral hearing approval -- of a week would be  
6 realistic time frame.

7 So again, Your Honor pointed out that with the current  
8 schedule, it's about fifteen days. And then the mayoral  
9 approval within the next -- give it a week should be  
10 obtainable. And at that point, it should be possible to have  
11 the plan go effective.

12 THE COURT: Okay. Got it. Okay. I think that covers  
13 my question with respect to the effect of the ongoing City  
14 review process and its interaction with Section 1129(a)(11).

15 Mr. Sullivan, is there anything else you want to  
16 cover, any other argument you want to present, before I open  
17 the floor to others?

18 MR. SULLIVAN: I don't think so, Your Honor. If  
19 anyone has any other concerns, I'm happy to address them at  
20 that time.

21 THE COURT: Okay. Let me just go -- I'm going to save  
22 debtor for last, because debtor is the only party who objected,  
23 and so I'll give Ms. Keenan an opportunity to speak.

24 We've already heard from Broadway East Group and who  
25 used the opportunity to state support for the plan and

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1 continuing to stand by the transaction as negotiated some  
2 months ago. So Mr. Soong, anything else you want to add?

3 MR. SOONG: No, Judge. I'm good.

4 THE COURT: Okay. Thanks. And let's see.

5 Mr. Bruh, anything you want to be heard on at this  
6 point, with the understanding we're reserving with respect to  
7 issues regarding the retention of the plan administrator,  
8 which, I have on my punch list, constitutes exculpation or  
9 equivalent provisions pertaining to that person, plus the  
10 503(b) issues that were discussed.

11 MR. BRUH: Right. Okay. So Your Honor, Mark Bruh for  
12 the United States Trustee. It's the 503(b) issue. We have the  
13 plan administrator you just mentioned. There's some minor  
14 things I'm sure I could work out with Mr. Sullivan and the plan  
15 administrator.

16 I haven't thoroughly read the confirmation order, but  
17 I did notice that there was -- and I thought it was resolved  
18 about the treatment of late-filed claims, and I'll go over that  
19 with Mr. Sullivan. But I think there's something where they  
20 would be deemed late, not disallowed, but late. And if they  
21 wanted to be timely --

22 THE COURT: Right.

23 MR. BRUH: -- the motion would be made. And I just  
24 want to make sure that that issue makes it into the order.

25 THE COURT: Yeah, I want that to be conformed with the

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1 fourth amended plan as revised because that, I think, had  
2 appropriate language. That was an issue I previously ruled on.

3 MR. SULLIVAN: Yeah, I believe we -- I believe the  
4 version we submitted to Your Honor, I believe, addressed Mr.  
5 Bruh's concern. The draft that I had sent him had some unclear  
6 language in it, which hopefully we've resolved.

7 MR. BRUH: And at this time, Your Honor, that is it.  
8 I'm sure if there's anything else, I have been talking to Mr.  
9 Sullivan, and we could resolve anything in connection with the  
10 confirmation order. But thank you.

11 THE COURT: Okay. Thank you. So does that mean -- I  
12 want to just translate that to procedurally. So it sounds like  
13 the Office of the U.S. Trustee considers its prior objections  
14 to the plan as voiced at the time of the disclosure statement  
15 to be resolved. And we're down to the 503(b) issues and the  
16 exculpation-like treatment of the plan administrator and maybe  
17 a couple of other things that are small issues that you think  
18 you're going to resolve offline; is that right?

19 MR. BRUH: That is correct, Your Honor. Thank you.

20 THE COURT: Okay. So I'm hearing no need for argument  
21 from you on plan issues at this time.

22 MR. BRUH: No, Your Honor.

23 THE COURT: Okay. Thanks.

24 Okay. Is there any other party besides the debtor who  
25 wants to be heard on confirmation today?

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1           Okay. Let's come around to Ms. Keenan on behalf of  
2 the debtor. Ms. Keenan, I reviewed your objection, and I just  
3 want to give you an opportunity to be heard however you wish.

4           MS. KEENAN: I'm on. Okay. I just had a limited  
5 objection, actually, and they have addressed the approval  
6 process. I had gone on the New York City website and basically  
7 took what the process is as disclosed on the website.

8           A mayoral hearing is a term that wasn't used. I'm  
9 presuming it's one of the processes that are mentioned in the  
10 uniform land use review procedure. Because normally, I thought  
11 that the mayor would be at the end, but the descriptions were  
12 much different than what Mr. Kass has said.

13           And I just want to -- with the understanding that  
14 there's going to be no signed contract or lease until this  
15 process has been concluded. I just want to confirm, is the  
16 City planning commission review and the City council review is  
17 part and parcel with the mayoral hearing? I don't know the  
18 answer because again, mayoral hearing was not in the City's  
19 website when I was reviewing it.

20           THE COURT: Oh, Mr. Kass, maybe you can just come back  
21 and clarify, although I think you did. But let's just make  
22 sure we have it right and whether or not what was described  
23 exactly aligns with the website, I don't know, is the driver  
24 for confirmation.

25           But Mr. Kass, let me just recap. I have absorbed that



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1 both from the papers and your oral comments that there are two  
2 remaining things that constitute hearings or that get  
3 characterized as hearings. One is September 21st. One is  
4 September 27th. And if you secure approvals, as you hope you  
5 will do, then there needs to be a final mayoral review and  
6 approval, which you are hopeful but can't guarantee will happen  
7 pretty soon after the second of those two events. Do I have  
8 all that right, Mr. Kass?

9 MR. KASS: Zachary Kass on behalf of the City. Yes,  
10 Your Honor, you're exactly right.

11 If I may comment just briefly on Mr. Keenan's --

12 THE COURT: Sure.

13 MR. KASS: -- query, I have been in touch with the  
14 City's representatives, Matthew Berk, who is be one of the  
15 people most fully familiar with both the relationship with East  
16 Broadway Mall and the way that property dispositions occur, is  
17 on the line. But it has been explained to me that the  
18 procedures under the uniform -- well, what it referred to as  
19 ULURP that Mr. Keenan just referred to, those procedures are  
20 not necessary to the current transaction. So we will not be  
21 going through the ULURP procedures. And that may be the source  
22 of the confusion that the debtor is expressing.

23 And therefore, the only remaining steps that the City  
24 believes are necessary are again, approval by the borough board  
25 and then mayoral approval, which does require a public hearing

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1 prior to that -- well, to that procedure.

2 THE COURT: Okay.

3 MS. KEENAN: Okay.

4 THE COURT: Got it. I just want to say for the record  
5 that I recall from a prior -- at a prior hearing asking if this  
6 required ULURP, that's all-caps U-L-U-R-P, review and approval  
7 and Mr. Kass reporting the answer was no. So the reason I'm  
8 making this observation is so that the record is clear that  
9 that that information was shared at an earlier date and hasn't  
10 just been sprung on anyone at this late phase of the case.

11 MS. KEENAN: Yeah.

12 THE COURT: Okay. So I think that's -- I think that's  
13 the procedural information that Ms. Keenan was looking for.  
14 And it certainly, I think, is adequate for confirmation  
15 purposes.

16 So let me turn back to Ms. Keenan and see if you had  
17 any other objection or position you want to express on behalf  
18 of debtor with respect to the request for confirmation of the  
19 Bank of Hope plan.

20 MS. KEENAN: No, that was my concern. And I had  
21 raised it. And I don't recall Mr. Kass saying it wasn't a  
22 ULURP program, so I stand corrected.

23 THE COURT: Okay. Great. Anything else you want to  
24 add?

25 MS. KEENAN: No, not at this time. It's good.

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1 THE COURT: Okay. Okay. That's great.

2 Let's see. I think I'm going to come back to Mr.  
3 Sullivan. I think that we're at a point where it's appropriate  
4 for me to rule with respect to confirmation, unless there's  
5 anything else that Bank of Hope wants to raise.

6 MR. SULLIVAN: No, Your Honor.

7 THE COURT: Okay. Oh, I'm going to make an oral  
8 ruling, but then, I haven't had a chance to carefully review  
9 the proposed order that Bank of Hope submitted very shortly  
10 before this hearing commenced.

11 Do you want to walk me through it, Mr. Sullivan, in  
12 case problems jump out at me? Or do you want me just to -- it  
13 seems like there's some moving parts, you're having some  
14 further discussions, maybe with the U.S. Trustee, and the thing  
15 to do is just wait and let me conduct my review after  
16 everybody's on the same page about it. But how do you want to  
17 handle that?

18 MR. SULLIVAN: That make senses, Your Honor. We could  
19 submit -- maybe what we could do, make sure that all the  
20 comments that we hear today, we'll incorporate them into  
21 another form of order. Hopefully, there won't be too many  
22 changes. And then maybe what we could even do is attach the  
23 form of plan administrator agreement that hopefully we are able  
24 to come to an agreement on, and then Your Honor can approve  
25 that as part of the order. I don't know if that makes sense or

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1 not, but that may be one way to do it.

2 THE COURT: Okay. I think that's fine.

3 So let me turn to my oral ruling with respect to your  
4 request for confirmation of the plan proposed by secured  
5 creditor Bank of Hope in the bankruptcy of East Broadway Mall.

6 I'm going to confirm the plan with a few provisos or  
7 things that need to be buttoned down, or maybe I'll call it  
8 conditions, as follows.

9 First, as the record makes clear, the plan requires  
10 appointment of a plan administrator. The agreement by which  
11 the plan administrator is to be retained has not been  
12 finalized, and some concerns have been raised about it in  
13 discussions between Bank of Hope and the Office of the U.S.  
14 Trustee and possibly with the contemplated plan administrator,  
15 him or herself. I think it's himself. That process is  
16 ongoing, and my approval of the plan is subject to an  
17 acceptable resolution of those ongoing discussions with the  
18 terms of retention of the plan administrator.

19 What is to happen is the debtor and the plan  
20 administrator and the U.S. Trustee's office are to continue  
21 discussing the issues that have been raised in an attempt to  
22 reach agreement on those. And then if the timing works out, I  
23 would suggest that the debtor do just what Mr. Sullivan said,  
24 which was submit the resulting agreement along with a revised  
25 version of the proposed order of confirmation. This definitely

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1 should be on notice to all parties and interest, specifically  
2 including debtor, and with a redline reflecting changes to the  
3 current proposed order.

4 And then I will allow parties, let's say, two business  
5 days to either express consent. I'll appreciate it if you know  
6 you consent to come to me sooner, but you'll have at least two  
7 business days to raise any objections. I guess, theoretically  
8 a person could ask for more time on top of that within that  
9 two-day window, but I'm hopeful that won't occur. At which  
10 point, I will -- and you may as well also send me the proposed  
11 revised confirmation order and agreement at that time, assuming  
12 you have it, in your view, ready. That will give me more time  
13 to review it to make sure I'm satisfied because I haven't  
14 closely scrutinized the actual proposed order yet. And I will  
15 be working at the same time that other parties-in-interest have  
16 an opportunity to raise any concerns.

17 So that way we won't lose time. We'll get to the  
18 finish line quickly if all goes as contemplated. And if any  
19 concerns are raised, we'll figure out what to do, which may  
20 take the form of a resumed hearing or something else. Okay.  
21 And if I have concerns, I'll reserve the right to just  
22 unilaterally modify your agreed-upon work product or else  
23 convene us to discuss. Okay. So that's how I'll handle that.

24 Subject to that loose end and that process, I've  
25 reviewed, really, the entire docket of the case. I've

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1 considered the proffer submitted on the record today  
2 representing what would have been the testimony of Andrew Park,  
3 a representative or employee of Bank of Hope, if required. I  
4 accept the factual representations that have been made, again,  
5 with the proviso that I'm just focusing on the factual  
6 representations. And I conclude that subject to nailing down  
7 the issues I just described with regard to the plan  
8 administrator, the plan, which is the fourth amended plan,  
9 possibly with further forthcoming slight modifications,  
10 satisfies all the requirements of the Code that are applicable  
11 and should be confirmed.

12 To the extent there are any remaining objections,  
13 they're overruled. I note that no one filed any objection,  
14 except that the U.S. Trustee carried over objections from the  
15 disclosure statement that went to plan confirmation issues, and  
16 those have been consensually resolved, subject to our  
17 discussion earlier on the record regarding exculpation, but for  
18 the remaining issues involving the plan administrator.

19 Further, I note Ms. Keenan, on behalf of debtor, had a  
20 limited objection that I think she said on the record was  
21 satisfied by the description of the workings of the remaining  
22 City review process. That's yet to come. To the extent  
23 there's any remaining objection, it likewise is overruled for  
24 reasons that will be implicit in my review of the Code  
25 confirmation requirements.

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1           So let me quickly just go through the governing legal  
2 framework and state my own bases for concluding that the  
3 applicable plan requirements have been satisfied here.

4           First, the general legal framework is that Section  
5 1129 of the Bankruptcy Code governs confirmation of a proposed  
6 plan of reorganization. Pursuant to Section 1129 of the  
7 Bankruptcy Code, a court "shall confirm a plan only if" -- and  
8 then omitting a few words -- "one, the plan complies with the  
9 applicable provisions of this title, U.S.C. Section 1129(a).  
10 This provision has generally been interpreted to require that a  
11 plan comply specifically with Sections 1122, governing  
12 classification of claims, and 1123, regarding the contents of a  
13 plan under the Bankruptcy Code."

14           I therefore, first, will turn to Section 1122, which  
15 governs classification. A plan must contain -- excuse me, a  
16 class under a plan must contain claims or interests that are  
17 substantially similar to each other. First, for secured  
18 claims, each holder often is in a class by itself, unless there  
19 are multiple secured creditors who share in the same collateral  
20 and have the same priority in that collateral. And then for  
21 unsecured creditors, they must be basically alike. Controversy  
22 can arise when unsecured claims or interests are substantially  
23 similar but split into different classes or are similarly or  
24 substantially different, yet are grouped together.

25           Here, we don't have any of these problems. The plan

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1 has a very simple classification system that Mr. Sullivan has  
2 explained, as have his papers, and no party has raised any  
3 objection to them. And the Court is satisfied that they are  
4 logical groupings of substantially similar claims that  
5 correlate to the necessities of this case and the plan and the  
6 treatment of claims under the plan.

7 Turning to Section 1123, that section includes both  
8 mandatory and permissive contents of plans under, respectively,  
9 1123(a) and 1123(b). So first, 1123(a) requires that a plan  
10 must contain certain things, and I've concluded that all of  
11 these requirements are satisfied here.

12 First, plans must classify claims or interests other  
13 than with certain exceptions. Here, the plan does that.

14 Second, the plan must specify which classes are  
15 impaired or unimpaired. The plan does that.

16 Third, the plan must specify treatment of the impaired  
17 classes. The plan does that.

18 Fourth, the plan must provide for the same treatment  
19 for each member of a class unless a class member agrees to less  
20 favorable treatment. That has been satisfied here.

21 I note that the plan is premised on and relies on  
22 quite meaningful concessions by specifically Bank of Hope and  
23 the City with respect to secured claims and administrative  
24 claims respectively, and obviously those two parties are have  
25 not only agreed to less favorable treatment, but they're



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1 proponents of a plan that provide them less favorable  
2 treatment. So that's fine.

3 Okay. Fifth, a plan must provide adequate means of  
4 implementation, including funding of distributions to classes.  
5 Again, the financial concession and the commitment of the  
6 contemplated new tenant Broadway East Group, LLC are invaluable  
7 and really the keys to the successful achievement of a  
8 confirmable plan here because there's an infusion of new  
9 capital that Bank of Hope has demonstrated provides adequate  
10 means of implementation of the plan, including funding of all  
11 administrative costs of the estate and then also of funding of  
12 distributions under the plan.

13 The sixth requirement of 1123(a) is not applicable  
14 here. There is simply no contemplated issuance of nonvoting  
15 securities and no issues raised here regarding voting power.

16 The seventh requirement of 1123(a) is that when  
17 selecting officers, directors, or trustees of the successor  
18 entity, the plan has to use a method that's in the interests of  
19 creditors, equity holders, and the public. That requirement is  
20 met here in the form of the selection and assignment of  
21 responsibilities to the plan administrator. And there's been  
22 no holding that -- or there's been no showing calling that into  
23 question.

24 Let's see. There's a requirement that where a debtor  
25 is an individual, the plan has to provide for the dedication of

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1 earnings for personal services and other future income is  
2 necessary to implement the plan. That's simply not applicable  
3 here.

4 Okay. And so to recap, and if I've omitted any  
5 specific sub-provisions of Section 1123, I've concluded that  
6 all are satisfied, including for the reasons I just stated.

7 Turning to Section 1123(b), which sets forth  
8 permissive contents of plans, things that a plan may do,  
9 although they're not required, plans may, among other things,  
10 impair or leave unimpaired any class, assume, reject, or assign  
11 executory contracts, subject to Section 365.

12 I'm going to pause on that permissive element to note  
13 that the colloquy I had with parties and my ruling stated  
14 earlier is incorporated in this, that the plan calls for  
15 assumption of whatever remaining leasehold or tenancy interest  
16 the current debtor has in the premises at 88 East Broadway, the  
17 mall premises. And the plan contemplates the assumption and  
18 assignment of those to the extent not extinguished so as to  
19 permit the City and Broadway East Group LLC to enter into its  
20 new leasehold agreement, which I will not characterize more  
21 precisely. Guard against inadvertent error.

22 I have specifically concluded that that's both  
23 permissible under the New Jersey case that I cited earlier  
24 today and an appropriate exercise of discretion and a  
25 constituent component of the plan here, in fact, a necessary

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1 component of for achieving the plan that's being presented here  
2 today.

3 I don't think I need to go through a punch list of  
4 permissive contents of a plan. Suffice it to say that I've  
5 identified nothing impermissible or unacceptable within the  
6 plan that would run afoul of or exceed the scope of that which  
7 is permitted under 1123(b) or that would fail to satisfy the  
8 mandatory requirements of 1123(a).

9 Then, turning to the further requirements for  
10 confirmation as set forth in Section 1129 of the plan, first,  
11 generally the burden is on the plan proponent here, Bank of  
12 Hope, to demonstrate compliance with Section 1129 by a  
13 preponderance of the evidence. In re: Ditech Holding Corp.,  
14 2019 Westlaw 4073378, \*3 (Bankr. S.D.N.Y. August 28, 2019).

15 There are sixteen specific requirements to  
16 confirmation set forth in Section 1129(a). I won't list them  
17 in the interest of time. But I've reviewed the plan, and I'm  
18 satisfied that all are met here.

19 First, I've already discussed at some length that the  
20 requirements of Section (a)(1) are met because the plan  
21 complies with applicable provisions of the Code, which courts  
22 construe by focusing on Sections 1122 and 1123, as I have just  
23 done. See 7 Collier on Bankruptcy Paragraph 1129.02. That's  
24 pulled from the sixteenth edition from 2019. See also In re:  
25 EnviroSolutions of New York, LLC, 2010 Westlaw 3373937, \*2-3

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1 (Bankr. S.D.N.Y. July 22, 2010).

2 Section 1129(a)(2), again, requires that the proponent  
3 of the plan -- proponent of the plan must comply with  
4 applicable provisions of the Code. I've already ruled that  
5 that requirement has been met here.

6 1129(a)(3) says the plan must be proposed in good  
7 faith and is by no means -- and is not forbidden by law. Good  
8 faith is not specifically defined in the Code, but courts  
9 interpret it to mean that, among other things, there's a  
10 reasonable likelihood that the plan will achieve a result  
11 consistent with the objectives and purposes of the Bankruptcy  
12 Code. See In re: 20 Bayard Views, LLC, 445 B.R. 83, 95 (Bankr.  
13 E.D.N.Y. 2011).

14 Here, there's been a showing that that that  
15 requirement has been met, and I specifically find that that  
16 requirement has been met. Debtor at various times in the case  
17 has voiced concerns or objections that the City has failed --  
18 I'll just speak colloquially -- to give the -- that the City  
19 has failed to give the debtor a fair shake or a fair  
20 opportunity.

21 I specifically find that the record is inconsistent  
22 with that contention sometimes voiced by debtor, that, as I  
23 noted earlier in the record, this case has been pending since  
24 2019. There's been extended periods of time allowed for debtor  
25 to seek to develop a confirmable plan, and debtor has never

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1 done so. The City has explained on prior occasions that it had  
2 concerns, including about debtor's ability to achieve reliable  
3 financing that would be of sufficient duration and size to  
4 allow it to successfully operate again. And the debtor -- and  
5 the City has explained that it has concluded that the best and  
6 highest possibility is to work with the Broadway East Group as  
7 a new tenant. The Court concludes that that is a decision that  
8 was made following ample opportunity for debtor to develop an  
9 alternative and is made in good faith by both the City and Bank  
10 of Hope as plan proponent.

11 Section 1129(a)(4) requires that any payment made or  
12 to be made by the proponent, by the debtor, for services or  
13 costs and expenses in or in connection with the case or in  
14 connection with the plan and incident to the case has been  
15 approved by or is subject to the approval of the Court as  
16 reasonable.

17 That, I believe, has been shown to be established in  
18 all respects, except that the U.S. Trustee's Office has some  
19 remaining concern about that. I think, in context with the  
20 plan administrator, limited to that, and that is a subject of  
21 ongoing discussion. But for possible issues there, that  
22 showing has been made. And specifically, the plan provides for  
23 payment of allowed administrative expenses. To be an allowed  
24 administrative expense requires court approval. And as the  
25 Bank of Hope notes, there have been administrative bar dates

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1 set and that there's a third one set so that later rising  
2 expenses are again to be submitted and reviewed and approved by  
3 the Court. So that provision is satisfied.

4 Section 1129(a)(5) requires that a plan proponent  
5 disclose the identity of any individual who will serve as  
6 director, officer, or a voting trustee. And here, the plan  
7 supplement identifies the plan administrator and its terms,  
8 again, subject to finalization of the terms of the actual  
9 agreement and remaining open issues.

10 1129(a)(6) is inapplicable here because that concerns  
11 the jurisdiction of governmental regulatory commissions, which  
12 aren't implicated in this case.

13 Section 1129(a)(7) requires that with respect to each  
14 class of impaired claims or interests under a plan, every  
15 holder of a claim or interest either accept the plan or receive  
16 or retain property of a value not less than the amount that  
17 such holder would receive or retain if the debtor were  
18 liquidated under Chapter 7 of the Bankruptcy Code. As Bank of  
19 Hope's brief notes, this is often called the best interests  
20 test. Here, that test is satisfied.

21 With respect to each impaired class of claims or  
22 interests, each holder of a claim, other than, I guess, debtor,  
23 who's deemed to reject the plan, has accepted the plan or in  
24 the case of interestholders, will receive or retain under the  
25 plan property of a value that is not less than the amount such

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1 holder would receive or retain if the debtor was liquidated  
2 under Chapter 7 of the Bankruptcy Code.

3 The legal vocabulary that sometimes gets applied is  
4 complicated, but the bottom line is we have plan proponents who  
5 have consensually advanced the plan, are funding it, and stand  
6 to benefit under it. They are all senior in line to the  
7 debtor, who is an equity interest holder, essentially, in the  
8 plan and -- actually, I'm not sure the organizational structure  
9 of the debtor, but they are an owner -- at most, they hold an  
10 ownership interest in the debtor itself.

11 And the plan calls for liquidation of debtor, but  
12 there is no possibility, no realistic possibility, that a  
13 Chapter 7 liquidation of the debtor would achieve any amount of  
14 proceeds that would inure to the benefit of the debtor itself  
15 to a greater extent than is being achieved by the plan. So the  
16 best interest test is satisfied here. And in fact, as the Bank  
17 of Hope notes, in addition to liquidation outcomes being  
18 equivalent under Chapter 7, there would be additional fees,  
19 costs, expenses, et cetera that would push the debtor even  
20 further underwater. I think that's a correct contention.

21 Turning to Section 1129(a)(8), that section requires  
22 that each of class of claims either accept the plan or not be  
23 impaired under the plan. Here, the ballot results have been  
24 reported, and I credit the reports of the balloting. There  
25 have been no ballots cast opposing the plan. And multiple

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1 classes have voted in support of -- excuse me, multiple  
2 impaired classes have voted in support of the plan, I think,  
3 including 1 and 4(a) and 4(b). Possibly I'm misspeaking  
4 because I'm not looking back, but there have been -- there's  
5 been a clear showing that balloting results demonstrate support  
6 for the plan.

7 Yeah, specifically, and I'm referring back to the  
8 proffer that was delivered earlier today, which in turn relies  
9 on the certification of ballots, Classes 1, 2, 3(a), 3(b),  
10 4(a), and 4(b) have accepted the plan or are unimpaired and  
11 deemed to accept. And there are simply no Class 4(c) members,  
12 although the plan was drafted to include a Class 4(c), because  
13 no one elected to receive Class 4(c) treatment, which that was  
14 an opportunity that creditors were given to receive so-called  
15 convenience treatment under the plan.

16 Class 5, which is interests as opposed to creditors,  
17 is deemed to have rejected the plan because the class is not  
18 receiving or retaining any property under the plan. But the  
19 plan does not discriminate unfairly against Class 5 in that the  
20 interests within Class 5 are dissimilar to other classes, and  
21 further, plan's segregation of Class 5 has a rational basis,  
22 that it silos or groups holders of claims that fall in a  
23 different place in the seniority scheme and have different  
24 entitlements and lesser entitlements to distributions than  
25 creditors. Further, classes senior to Class 5 are not



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1 receiving more than the full value of their claims, and  
2 therefore there is no entitlement of Class 5 members to receive  
3 or retain any property under the plan.

4 Therefore, the fair and equitable standard Section  
5 1129(a)(8) has been satisfied.

6 Section 1129(a)(9) requires that holders of certain  
7 types of allowed priority claims must be held -- must be paid  
8 in conformity with the Code unless they've agreed otherwise.  
9 Here, again, that requirement is satisfied by the plan.

10 Section 1129(a)(10) states that if a class of claims  
11 is impaired under the plan, at least one class of claims that  
12 is impaired under the plan has accepted the plan, determined  
13 without including any acceptance of the plan by any insider.  
14 The Bank of Hope has shown that this requirement is satisfied,  
15 again, because impaired classes, including 1, 4(a), and 4(b)  
16 all have accepted the plan.

17 Section 1129(a)(11) was something I focused on earlier  
18 today during the hearing. That requires that confirmation of  
19 the plan not be likely to be followed by the liquidation or the  
20 need for further financial reorganization of the debtor or any  
21 successor to the debtor under the plan, unless such liquidation  
22 or reorganization is proposed in the plan.

23 First, the Bank of Hope has made a substantial showing  
24 of the financial viability of the plan, including the securing  
25 of new financing and capital infusions from the new tenant and

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1 mechanisms to satisfy, among other things, the payment of all  
2 administrative expenses of the estate, as well as other  
3 obligations, and to secure a new commitment from a robust  
4 tenant who the City has concluded, as landlord, is well  
5 positioned and likely to successfully operate the facility  
6 moving forward.

7           The Court finds that these are reasonable  
8 determinations and satisfy the financial -- make a sufficient  
9 showing of the financial robustness of the proposed plan that  
10 Section 1129(a)(11) is satisfied.

11           I did raise a question whether the condition on  
12 effectiveness of the plan of completion of the ongoing City  
13 review process was consistent with the requirement that I --  
14 the required finding that I must make under Section  
15 1129(a)(11). I conclude that that standard is not terribly  
16 high, for reasons set forth in the moving brief, and that there  
17 is a reasonable likelihood that that process will successfully  
18 culminate and result in realization and finalization of the  
19 plan as contemplated.

20           Further, the plan has mechanisms for the parties to  
21 negotiate and attempt to modify or reach other agreements in  
22 the event those approvals don't come through as contemplated.  
23 The parties didn't brief the -- didn't specifically identify  
24 authority approving plans with similar post-confirmation  
25 conditions to effectiveness in the form of governmental

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1 approvals.

2 Before the hearing, I looked at the history of the  
3 American Airlines bankruptcy, which was obviously a major,  
4 major case that culminated with the merger of American Airlines  
5 and then US Air. That plan was confirmed, even though there  
6 was a pending antitrust lawsuit and antitrust review that was  
7 required before the merger could be consummated. I think that  
8 is an analogous type of post-confirmation governmental review  
9 that in that case, as here, was potentially highly  
10 consequential and yet was not an impediment to confirmation  
11 under 1129(a)(11).

12 I'll note that the City also, through Mr. Kass today,  
13 made reference to a number of other cases where courts have  
14 approved and confirmed plans subject to completion of what can  
15 be rather lengthy tracks of governmental review.

16 So I think I'm satisfied that 1129(a)(11) is met.

17 Turning to Section 1129(a)(12), that requirement is  
18 satisfied because the plan provides for payment of all fees  
19 payable to the Office of the U.S. Trustee.

20 And for various reasons set forth in the papers, I  
21 won't elaborate on the requirements of Sections 1129(a)(13),  
22 (14), and (15) are not applicable, and therefore -- Bank of  
23 Hope puts it "are deemed satisfied". I'm not sure if that's  
24 really the right wording, but I will say they are not --  
25 because they're not applicable, they are not impediments to

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1 confirmation. They are, I think, requirements that apply where  
2 applicable, and they're not here.

3 Turning to Section 1129(a)(16), that subsection  
4 requires that all transfers of property under the plan shall be  
5 made in accordance with any applicable provisions of  
6 nonbankruptcy law that govern the transfer of property by a  
7 corporation or a trust that is not a moneyed business or  
8 commercial corporation or trust. To the extent applicable, the  
9 plan is contingent on successful completion of the City's  
10 transactional review process, and that's the only potential  
11 applicable process that anyone has raised or identified. And  
12 so I conclude that section is satisfied.

13 Okay. Turning to remaining provisions, having just  
14 completed the review of the long list of requirements of  
15 1129(a), Section 1129(b) is also satisfied. That's a somewhat  
16 involved provision. There's been no contention or dispute  
17 raised regarding or pertaining to 1129.

18 I'll note that debtors have shown that the  
19 classifications involved are appropriate, Class 5 is dissimilar  
20 to all other classes, and that there's a rational basis for the  
21 grouping raised because Class 5 and only Class 5 consists of  
22 interests, and it doesn't consist of any other types of  
23 parties-in-interest in the case or creditors.

24 Further, the plan does not discriminate unfairly among  
25 the rejecting class or against the rejecting class, and this

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1 satisfies the requirements of Section 1129(b).

2 Further, there's no class junior to Class 5 that is to  
3 retain or receive any property under the plan, again,  
4 demonstrating compliance with Section 1129(b), and in fact, no  
5 party has claimed that there's unfair discrimination or that  
6 the plan is not fair and equitable in how it treats creditors  
7 and interestholders.

8 Section 1129(c) is satisfied. That permits the Court  
9 to confirm only one plan. What's before the Court is the only  
10 plan that's even been presented at this time and is subject to  
11 approval. Debtor had previously proposed a plan some time ago  
12 that the Court determined was patently unconfirmable, and so  
13 that proposal did not progress beyond the disclosure-statement  
14 stage.

15 Mr. Park testified credibly that the plan does not  
16 have, as one of its principal purposes, the avoidance of taxes  
17 or avoidance of requirements of securities laws. So the Court  
18 concludes that Section 1129(d) is satisfied.

19 I think that completes Court's review and its  
20 articulation of the bases for its holdings that all  
21 requirements for confirmation of the plan have been satisfied  
22 here, and the Court therefore will confirm the plan, subject to  
23 the reserved issues described at the start of my ruling and the  
24 procedures described at the start of my ruling, which are that  
25 debtor is to continue talks specifically with the U.S. Trustee

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1 and please, if anyone else has any issues they want to raise  
2 with respect to your proposed order, please consider those as  
3 well. Then, the debtor is to also seek agreement with the  
4 Office of the U.S. Trustee regarding the open issues involving  
5 plan administrator and any other open issues to be referred to  
6 as small matters, the issues he described as small.

7           Once that's done, the debtor is to submit a revised  
8 proposed order confirming the plan, along with a revised  
9 proposed plan administrator agreement, and then any other  
10 related documentation that the Court should see. In fact, I  
11 think what you should do is docket those in redline form and  
12 clean form and alert chambers that they've been submitted.  
13 Then, any party-in-interest will have until the second business  
14 day following the docketing of those documents to raise any  
15 objection or concern.

16           If everyone happens to consent before that time, let  
17 Chambers know. I'll appreciate the courtesy, and I'll maybe be  
18 able to approve it without waiting that extra day or two. In  
19 the meantime, I will use that available time to conduct my own  
20 review of the revised documentation, and if I have any  
21 concerns, I'll either unilaterally act or reconvene us to  
22 figure out what we need to do next or raise any questions I  
23 have.

24           Okay. Let me ask Mr. Sullivan If I have either  
25 misstated anything or failed to cover anything I need to do

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1 today.

2 MR. SULLIVAN: No, Your Honor. I appreciate all the  
3 time that you've taken to go through each of the points, and I  
4 think you covered everything.

5 THE COURT: Okay. Great. Let me just say, by way  
6 of --

7 MR. BRUH: Your Honor, may I just speak here? Mark  
8 Bruh for the --

9 THE COURT: Yeah. Go ahead, Mr. Bruh.

10 MR. BRUH: Sorry. Mark Bruh for the United States  
11 Trustee. I apologize for interrupting.

12 It's the 503(b) issue. I just don't know how the  
13 Court wants to handle scheduling that. Is that going to be  
14 argued later or are we -- I'm fine if you just want to take it  
15 on submission. I don't know how Mr. Sullivan --

16 THE COURT: I'm going to -- I think you're -- well,  
17 tell me what makes sense. I had envisioned -- I had understood  
18 there would be discussions and possible moves to satisfy the  
19 U.S. Trustee's office's concerns or a possible consensual  
20 outcome, in which case I'll just look at it on submission. If  
21 not, I guess if there's a remaining disagreement that needs to  
22 be argued, we could either argue it right now, or we could wait  
23 and see further discussions and whether that bears fruit and  
24 then reconvene later if needed.

25 What do you think makes sense, Mr. Bruh?

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1 MR. BRUH: I think Mr. Sullivan and I have a differing  
2 view on the 503(b) issue. It's been hanging out there for  
3 quite some time, and there's really been no progress on it. So  
4 we could either argue it or just --

5 THE COURT: Okay. Give me your --

6 MR. BRUH: I don't know --

7 THE COURT: -- articulation of what the 503(b) issue  
8 is exactly.

9 MR. BRUH: I think, so we did preview our argument at  
10 the last hearing, and we put in our objections. I think pretty  
11 clear that we believe the proposed payment to the bank is a  
12 substantial contribution claim under 503(b). I believe that  
13 it -- we believe that it needs to make a showing in order to be  
14 paid, and it has to be done by notice and a hearing and with  
15 approval of the Court. And that is not done here, Your Honor.

16 Also, with respect to the cases cited by the bank, we  
17 believe they're distinguishable to the facts of this case.  
18 Those were findings under a global settlement or that the  
19 payments weren't in violation of 1129(a)(4), which we believe  
20 would not be the case here because there is a portion of the  
21 payment to be made by a plan proponent.

22 THE COURT: Wait, I'm sorry. Your audio drifted off  
23 again. Give me that last sentence.

24 MR. BRUH: I said that we believe that the facts of  
25 this case are different than those cases cited by the bank in



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1 its moving papers -- or excuse me, in its reply to our  
2 objection, that in those cases there was a global settlement  
3 for approval of the fees of the applicants, and the Court's  
4 made a finding that those payments were not in violation of  
5 1129(a)(4). And 1129(a)(4), it states that it's a payment to  
6 be made by a proponent or by the debtor, and it's subject to  
7 approval of the court as reasonable.

8 I mean, I can go into how we find this case is  
9 different here, but we believe that the debtor -- excuse me,  
10 debtor, I keep saying debtor -- that the bank should make an  
11 application and Your Honor should review the fees, just deem  
12 them appropriate in the case.

13 THE COURT: All right. Mr. Sullivan, you want to  
14 respond?

15 MR. SULLIVAN: Yes, Your Honor. Yes. As we kind of  
16 mentioned earlier and as pointed out in the papers, the  
17 situation here is a little bit different than your usual case.  
18 Right. We have an agreement amongst the City, the bank, and  
19 Broadway East Group to cover any administrative expenses and  
20 priority claims that may need to get paid. And we're going to  
21 split it three ways.

22 And so the understanding is that if we can reach an  
23 agreement as to the administrative expenses in order to propose  
24 and consummate and implement the plan, which are primarily the  
25 expenses incurred by my firm to -- for the legal expenses, then

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1 we wouldn't need to bother the Court with trying to have a  
2 hearing on it when there's really just an agreement amongst the  
3 parties are basically resolving that and that we would only  
4 need to bother Your Honor if the parties, for whatever reason,  
5 could not agree.

6 THE COURT: Oh, yeah. No, look, particularly if -- I  
7 mean, your firm has done a lot. My reaction is that,  
8 notwithstanding the funding agreement that's occurred here,  
9 what's being done is payment to your counsel through the  
10 auspices of the bankruptcy process and the bankruptcy case for  
11 work done in connection with the case, and that does strike me  
12 as falling within the terms of Section 1129(a)(4), which  
13 requires that payments for services and costs in connection  
14 with the case be approved by the Court is reasonable. Right.

15 That's the concern you've got, Mr. Bruh? And then  
16 you've got -- in addition, I guess we have the substantial  
17 contribution issue?

18 MR. BRUH: Correct, Your Honor. It's both. They're  
19 related. Yes.

20 THE COURT: Yeah. So I think that the treatment --  
21 yeah. I will just say that my tentative view, maybe not that  
22 tentative, is that the U.S. Trustee's office is right, that  
23 notwithstanding the funding arrangements, entitlement to  
24 payment still needs to be established and subject to court  
25 review, both with respect to just the general fee application

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1 processes and with the required showing of substantial  
2 contribution because the fees were incurred by a party other  
3 than the debtor or the Trustee.

4 That said, I think the Bank of Hope has a very robust  
5 case for a substantial contribution finding because it came in  
6 and really kind of spearheaded the achievement of a confirmable  
7 plan at a time when that was looking like a real long-shot.

8 So let me first ask Mr. Bruh, that's the ruling you're  
9 looking for, right?

10 MR. BRUH: Yes, Your Honor. I mean, I think there  
11 should be (indiscernible) --

12 THE COURT: Okay. Yeah, you don't have to elaborate.

13 Let me just ask Mr. Sullivan, I'll give you another  
14 shot to persuade me that's wrong. I'll say nothing further.  
15 I'll give you another shot to persuade me why that's wrong.  
16 But I understand that you're trying to distinguish the  
17 circumstances here and the money's coming from wonderful  
18 settling parties and you've achieved a great result, and yet I  
19 just don't see why that justifies an end run around the  
20 requirements that Mr. Bruh raises and identified.

21 MR. SULLIVAN: Right. There's two things, I guess, I  
22 would respond to that.

23 I mean, to some extent, Your Honor, when the parties  
24 negotiated this deal, Bank of Hope agreed to kind of incur the  
25 expenses, subject to reimbursement. Right. We could have

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1 probably had each of the three parties sort of contribute along  
2 the way, or we could have readjusted the allocation under the  
3 plan, such that Bank of Hope would get a larger distribution,  
4 instead of, like, let's say, two million or whatever the number  
5 is. I forget the exact numbers that are going to each party.  
6 But maybe a little bit more go to the Bank of Hope, a little  
7 bit less go to the City, and maybe the approved new tenant  
8 kicked in a little bit more money on the purchase price.  
9 Right.

10 So all of these things are sort of fungible to some  
11 extent, but the way that it was negotiated, just the cleanest  
12 way to make it easier, to make it seem the most fair, that each  
13 of the parties were sort of bearing some of the responsibility  
14 for the cost going forward, this is the way we sort of struck  
15 it. But it certainly could have been negotiated a different  
16 way, given that money is fungible.

17 THE COURT: Yeah, let me say, I'm having -- well,  
18 sorry, maybe that's one of your -- I think you said you maybe  
19 had a couple of points, and this was one. I'm not --

20 MR. SULLIVAN: Yeah, that was the first point.

21 THE COURT: -- (indiscernible) that one because sure,  
22 you could have -- I mean, any manner of structures and deals  
23 could exist, but this is the deal you've got. And it entails  
24 payment of your expenses, which really seems to fall within the  
25 statutory language.

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1 MR. SULLIVAN: I understand, Your Honor. We were just  
2 trying to, like -- we were trying to simplify the process.  
3 We're not necessarily --

4 THE COURT: Okay.

5 MR. SULLIVAN: -- like I had mentioned to Mark, we  
6 were willing to let you call it and live with it. It wasn't a  
7 deal-breaker. The --

8 THE COURT: Okay. Well, look, I think that's where  
9 I'm at. But I think you had one arrow in your quiver remaining  
10 that you wanted to roll out --

11 MR. SULLIVAN: Yeah, the one --

12 THE COURT: -- so what's that?

13 MR. SULLIVAN: The one other I just wanted to mention  
14 is, is that we did submit an administrative claim through, I  
15 believe, the second bar date. Right. So to the extent that  
16 Your Honor is willing to rule on that part of it and we can get  
17 approval of that aspect of it at this point, and then we can  
18 always apply for additional expenses as part of the third  
19 administrative bar date --

20 THE COURT: Got it. Let me tell you --

21 MR. SULLIVAN: -- at a later date.

22 THE COURT: -- I'm not going to -- I'm not going to do  
23 that at the time of confirmation. If you want to seek approval  
24 on a rolling basis up through that amount, I'll get you heard  
25 pretty quickly.

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1 I'm not sensing from Mr. Bruh that he smells a rat or  
2 thinks that your firm didn't make substantial contributions.  
3 But I know this is a programmatically important thing for his  
4 office. And I think honestly, it's a programmatically  
5 important thing for the Court, too. The Court needs to  
6 maintain control of expenditures and disbursements running  
7 through estates on account of professional fees, and  
8 particularly if it's -- and then also just to ensure that the  
9 substantial contribution standard is met I think is right.

10 So basically, you can submit an application whenever  
11 you want, but I'm not going to -- I don't intend to or want to  
12 use confirmation as a mechanism to evade those requirements.  
13 So I guess that's my ruling. Okay.

14 MR. SULLIVAN: All right. Thank you.

15 THE COURT: Yep. Thanks.

16 MR. BRUH: Thank you, Your Honor.

17 THE COURT: Mr. Bruh, did I any other issues you've  
18 got to raise? I appreciate your raising that one.

19 MR. BRUH: No, Your Honor. We appreciate it. And Mr.  
20 Sullivan, I can tell you, gets me the application, I'll review  
21 it as quickly as possible so we can get him comments --

22 THE COURT: Yep.

23 MR. BRUH: -- if we have any. You got my word.

24 THE COURT: I will say, it's been a long case.

25 MR. BRUH: Yes, Your Honor.

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1 THE COURT: When the money finally becomes available,  
2 everyone's done a lot of work, and I certainly think it'll be  
3 fair. I'm sure the -- I trust the U.S. Trustee's office will  
4 apply fair and prompt review, and I'll do the same. Okay.

5 MR. BRUH: Yes.

6 MR. SULLIVAN: Thank you, Your Honor.

7 MR. BRUH: Thank you.

8 THE COURT: I think now we're ready to be done.

9 Anyone else need to raise anything?

10 Yes, go ahead, Mr. Soong.

11 MR. SOONG: Yes. Thank you. And this will be very  
12 brief. But this is an issue that's not new between us and the  
13 City, and I wanted to raise it here to see if we can have some  
14 assistance on it.

15 In our final bid and also in our term sheet, and  
16 presumably also in the final lease, the new tenant has made a  
17 commitment to relocate the existing subtenants so as not to  
18 disrupt their business. And we continue to be committed to do  
19 that. The problem is that we've not yet been given a list of  
20 the current tenants that are in the premises.

21 The City has told me -- and Mr. Kass, you can correct  
22 me on it, but the City has told me that it doesn't have any  
23 information about the current tenants. I have instructed my  
24 clients to do what it can as far as identifying who appears to  
25 be operating right now. But in order for us to plan our

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1 substantial reconstruction and renovation of the space, we need  
2 to know how we're going to reallocate or relocate or move  
3 around the existing subtenants, to the extent that they are  
4 existing subtenants.

5 And so I'm raising this to see if either the Court or  
6 any of the other parties, perhaps the Trustee's office, perhaps  
7 Ms. Keenan, can help me. We are looking essentially for a list  
8 of the current tenants so that we can confirm or verify that  
9 they are indeed the tenants.

10 THE COURT: Okay. Let me just say, I understand your  
11 need for that. That's not really a confirmation issue. I will  
12 encourage all the parties to provide information and be  
13 cooperative to accomplish this objective. I don't want to get  
14 down into the weeds on this, but Mr. Soong, I mean, I don't  
15 know. If your client physically goes there, you can stick  
16 letters in every unit's door for that matter. But I'll leave  
17 that to you.

18 I think all I should say is whoever has information  
19 that will help Mr. Soong do what he says he needs to do, please  
20 provide it.

21 And Mr. Soong, if you need to come back to the Court  
22 or your entity needs to come back to the Court, so be it. I  
23 don't think that's an issue that's raised for ruling today.  
24 Okay.

25 MR. SOONG: Thank you. Thank you.



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1 THE COURT: All right. So once again, I think we're  
2 done, but I'll just make sure. Anyone else want to raise  
3 anything?

4 Okay. I paused. No one said yes. Thank you all for  
5 your efforts. Oh, I was just going to start to say, this has  
6 been a lengthy and tiring hearing, but I do want to -- and it's  
7 2 o'clock, and I haven't had lunch. I ran through my brief,  
8 teeny window to have lunch, and I'm going to go right to  
9 something else now.

10 But I do want to say that I know this case didn't go  
11 the way debtor wanted it to go, but I will say this is an  
12 important facility to the Chinatown community and the City, and  
13 I am very hopeful and glad that through bankruptcy processes  
14 you seem to be on the cusp of putting a really solid operator  
15 in place and putting this facility back to use where people can  
16 be -- in a way that people can be employed, revenue can be  
17 generated, including for the City, and the community will have  
18 a nice facility as well. Okay.

19 So thank you for your work and I want to just  
20 acknowledge that happy outcome that we seem to be on the cusp  
21 of. Okay. So thank you, and we're adjourned.

22 (Whereupon these proceedings were concluded)  
23  
24  
25

I N D E X

RULINGS:

PAGE LINE

Debtor's motion for reconsideration is  
denied

13 25

Exculpation provision is approved, as  
noted on the record

50 13

Court's analysis on assumption and  
assignment of existing lease

54 23

Bank of Hope's plan is confirmed, with  
conditions as noted on the record

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C E R T I F I C A T I O N

I, River Wolfe, certify that the foregoing transcript is a true  
and accurate record of the proceedings.



River Wolfe (CDLT-265)

TTA-Certified Digital Legal Transcriber

eScribers

7227 North 16th Street, Suite #207

Phoenix, AZ 85020

Date: September 15, 2023

September 12, 2023

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